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BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

DOCKET

06-OIR-1

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In the Matter of:)
)
Greenhouse Gas Emission Performance) Docket No.
Standard for Implementing Senate) 06-OIR-1
Bill 1368)
_____)

CALIFORNIA ENERGY COMMISSION

HEARING ROOM A

1516 NINTH STREET

SACRAMENTO, CALIFORNIA

FRIDAY, DECEMBER 8, 2006

10:05 A.M.

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John Geesman, Associate Member

ADVISORS PRESENT

Kevin Kennedy

Melissa Jones

Gabriel D. Taylor

STAFF PRESENT

Gary Collord

Chris Tooker

Lisa DeCarlo

Karen Griffin

David Vidaver

Matt Layton

CALIFORNIA PUBLIC UTILITIES COMMISSION

Julie Fitch

CALIFORNIA AIR RESOURCES BOARD

Chuck Shulock

ALSO PRESENT

Bruce McLaughlin, Attorney

Braun and Blaising, P.C.

California Municipal Utilities Association

Jerry Jordan, Executive Director

California Municipal Utilities Association

ALSO PRESENT

Susan Patterson
Sacramento Municipal Utility District

Patrick Kolstad, Councilmember
City of Santa Clara

Audrey Chang
Natural Resources Defense Council

Patrick K. Holley
Jeffrey Hahn
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Rory Cox
Pacific Environment
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Independent Energy Producers Association

Christopher J. Warner, Chief Counsel
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P R O C E E D I N G S

10:05 a.m.

PRESIDING MEMBER BYRON: Welcome. I'd like to thank you all for being here this morning. At first I'd like to apologize for any confusion with regard to the starting time. We noticed this for 10:00, but there was also a 9:00 item on the call-in time. So, I apologize for that.

Allow me to introduce myself. I'm Jeff Byron, and I am the Chair on the Electricity Committee for the Commission, along with my fellow Commissioner, John Geesman. In fact, if I could I'll just go ahead and introduce the rest of the folks here at the dais this morning.

To John's right is his Senior Advisor, Melissa Jones. All the way to the right is Chuck -- Chuck and I met a couple of weeks ago -- Chuck Shulock, Air Resources Board. To my left is my Senior Advisor, Kevin Kennedy. And to his left, from the California Public Utilities Commission, is Julie Fitch. And all the way to the left is my Second Advisor, Gabe Taylor.

We have a very full agenda; not very many words, but it's a very full agenda. I'd like to just take a second and just state the purpose

1 of our meeting here for the record.

2 This is a workshop to invite public
3 comments and discussion -- excuse me -- and
4 discuss requirements for developing and adopting a
5 greenhouse gases emission performance standard,
6 and implementing regulations pursuant to Senate
7 Bill 1368.

8 And I think I'll stop there. We're
9 going to go through an overview of 1368; and I
10 believe that the staff will be conducting that
11 overview. In fact, I'll take a second to just
12 introduce the staff that's here today.

13 Gary Collord is the Project Manager here
14 at the PUC (sic), in the corner there. We have
15 Lisa DeCarlo at the table. Chris Tuper -- Toper
16 -- I'm sorry, Chris, Tooker. Forgive me. Chris
17 Tooker. Karen Griffin and Dave Vidaver.

18 And I think with that I'll turn it
19 over -- let me see if there's anything else that I
20 wanted to add here. Let's go back to the agenda
21 for a second. We're going to do overview, some
22 opening statements and we've listed the different
23 agencies and some of the stakeholders. Of course,
24 that would be an open opportunity for others to
25 provide their opening statements. We'll probably

1 try and address some of those issues immediately
2 from the dais here.

3 And then we'll go into more of a
4 roundtable discussion of the staff's issue paper
5 that they've prepared. And I didn't look outside,
6 but I assume there's also copies of that sitting
7 out on the table. It's an excellent paper that
8 they've also prepared a cheat-sheet for that's out
9 there that has a number of the key questions that
10 we hope will be helpful to you, as it will to us,
11 in keeping track of some of the significant
12 comments that are made.

13 And I think the only other thing to say
14 about the agenda is although it shows to be about
15 five hours, I assure you that Commissioner Geesman
16 and I are committed to make sure that we stay and
17 hear all of your comments. Correct, Commissioner?
18 Would you like to add anything, John?

19 ASSOCIATE MEMBER GEESMAN: We have an
20 obligation in San Francisco at noon on Monday.

21 (Laughter.)

22 PRESIDING MEMBER BYRON: Okay. That
23 would be lunch. So, I think that's enough of my
24 housekeeping issues. So I'd like to turn it over
25 to Gary Collord. Go ahead, Gary.

1 MR. COLLORD: Okay, and just a few other
2 housekeeping issues before we begin. For those of
3 you who are not familiar with this building there
4 are restrooms out this way by the glass doors; and
5 also behind the security desk out this way. And
6 there's also a snackbar up on the second floor
7 with coffee and other beverages. Just take the
8 stairs up to the second floor by the security
9 desk.

10 And for those folks that are calling in,
11 be sure to, if you're going to step away from the
12 proceedings for awhile, be sure to mute your
13 phones or hang up and call back so that we're not
14 left with music playing.

15 And also for the folks calling in,
16 please mute your phones when you're not speaking,
17 because sometimes the background noise interferes
18 with the proceedings.

19 And finally, there is a participate
20 sign-up sheet that's out on the front desk here.
21 And we'll bring that in when the roundtable
22 discussion begins to have participants in that
23 event sign in, as well.

24 Senate Bill 1368 requires the Energy
25 Commission to establish and adopt a greenhouse

1 gases emissions performance standard and governing
2 regulations for all long-term financial
3 commitments for baseload power generation made by
4 the state's publicly owned utilities.

5 The emission standard is to be based on,
6 and not exceed, the rate of greenhouse gas
7 emissions associated with combined cycle, natural
8 gas, baseload generation; and be defined in terms
9 of pounds of greenhouse gases emitted per megawatt
10 hour.

11 The legislation directs the Energy
12 Commission to adopt the emission performance
13 standard and governing regulations, including
14 enforcement provisions, in conjunction with the
15 state's Air Resources Board and the California
16 Public Utilities Commission by June of 2007. And
17 begin enforcing the standard upon adoption.

18 In order for the Energy Commission to
19 adopt the performance standard and regulations by
20 June, and begin immediate enforcement, as
21 required, the Commission needs to draft and submit
22 the proposed standards and regulations to the
23 Office of Administrative Law by late February to
24 allow them sufficient time to review and approve
25 the regulations prior to the Energy Commission's

1 adoption of the regulations.

2 The legislation also directs the PUC, in
3 consultation with the Energy Commission and the
4 state Air Resources Board, to adopt an emission
5 performance standard that will apply to long-term
6 financial commitments for power made by the
7 state's investor-owned utilities. And the
8 legislation directs the PUC to adopt a performance
9 standard for the IOUs by February 1st of 2007.

10 As directed by the legislation the
11 Energy Commission is working closely with the PUC
12 to establish an emissions performance standard for
13 the publicly owned utilities that will be
14 consistent with that being developed for the
15 investor-owned utilities by the PUC.

16 Finally, Assembly Bill 32 requires the
17 state's Air Resources Board to adopt regulations
18 by January 2008 to require mandatory reporting of
19 statewide greenhouse gas emissions and begin
20 enacting a series of enforceable measures to
21 reduce emissions from all significant sources,
22 including electrical power generation.

23 The underlying goal of AB-32 is to bring
24 the state's greenhouse gas emissions down to their
25 1990 level by the year 2020.

1 And the Energy Commission Staff is
2 coordinating with ARB on the respective
3 implementation of both SB-1368 and AB-32.

4 And we also have staff from the Public
5 Utilities Commission and state Air Resources Board
6 here to present further information about the
7 goals of their programs in light of the provisions
8 of SB-1368. And Julie Fitch is here from the
9 Public Utilities Commission to comment further on
10 their efforts.

11 And we would also like to encourage
12 folks to come to the table, because the idea here,
13 especially later in the day, is to have kind of an
14 ongoing dialogue about these issues and the
15 various issues and options raised in staff's issue
16 identification paper.

17 And so with that I'll turn it over to
18 Julie.

19 MS. FITCH: Good morning. So before I
20 even start let me just say that this is absolutely
21 the most boring presentation I've ever put
22 together on an important subject. So, I hope that
23 everyone has coffee and I'm going to try to do it
24 fast.

25 I think I'm up first by virtue of the

1 fact that the legislation requires the PUC to
2 adopt a standard before the Energy Commission. And
3 so we're furiously trying to finish our proposed
4 standard. But, having said that, I still want
5 everybody to know that I'm definitely here today
6 not only in a presentation mode, but also in a
7 listening mode because we want to make sure we
8 endeavor to be as consistent as possible with both
9 standards that the two agencies will be adopting
10 at different time.

11 Let me just jump right in. Short
12 history: In October of 2005 the PUC adopted a
13 policy statement with the intent of adopting an
14 emissions performance standard. I believe the
15 Energy Commission adopted a similar statement in
16 the IEPR around the same timeframe. So we were
17 consistent at that point, as well. And I think by
18 all accounts that was the inspiration for the
19 legislation in the first place.

20 In February of this year we opened a
21 rulemaking at the PUC with two phases, a
22 greenhouse gas related rulemaking. And the first
23 phase was the emissions performance standard,
24 which is what we're attempting to complete right
25 now. Phase two looks at adoption of the load base

1 cap for investor-owned utilities and others. And
2 that's just getting kicked off. So that's more
3 related to the AB-32 effort.

4 In June of this year we held three days
5 worth of workshops on the emissions performance
6 standard and how we would implement it. I think a
7 lot of people in the room were in those workshops.
8 And then meanwhile in late September, SB-1368 was
9 signed.

10 So the reason I'm going through this is
11 because the timing was a little bit weird, because
12 we had developed what we thought were some
13 consensus proposals from the workshops; and then
14 we got the legislation signed that, in some cases
15 changed what we thought we could do.

16 And the timeframe that had been laid out
17 in the proceeding for us was that on October 2nd
18 staff was supposed to produce a final proposal,
19 workshop report. And so we did our very best to
20 incorporate everything we knew about SB-1368's
21 final language in that report. But I think we
22 didn't completely do the best job, because since
23 then, through comments from parties that came in
24 in October in response, we've been refining our
25 ideas.

1 So what's next is timing-wise we need to
2 adopt our standard before February 1st of 2007
3 according to the legislation. And so working
4 backwards from that, and including Commission
5 meeting dates and 30-day comment period
6 requirements, basically we need to mail a proposed
7 decision before Christmas essentially. So, we're
8 in the throes of trying to get that complete.

9 Let me just go through quickly what the
10 PUC Staff proposal was, because that's what's on
11 the public record; and I think part of the purpose
12 of my doing this is to put what we've done onto
13 your record at the CEC. So I'll go quickly
14 through the provisions of that proposal.

15 And then after that I'll talk about what
16 the really controversial issues are that came up
17 in comments that we probably need to address much
18 more fully.

19 So, first thing, design goals of the
20 EPS. Essentially we came at it from the
21 perspective of this was a policy to prevent
22 backsliding of emissions characteristics of
23 portfolios of investor-owned utilities prior to
24 implementation of a greenhouse gas cap. And so we
25 looked at this as sort of an interim step that may

1 or may not stay in place after a cap is
2 instituted.

3 We wanted to make sure that whatever we
4 did here wouldn't be a cost to ratepayers; that it
5 would not harm reliability goals; and that it
6 would be, you know, simple enough; provide
7 certainty; and obviously be consistent with the
8 statute.

9 As I said before, we have to adopt this
10 standard in consultation with the CEC and the ARB
11 before February 1st. And as I also said, it's an
12 interim standard that we may reevaluate later. I
13 think that's actually explicitly stated in SB-
14 1368, that both the CEC and the PUC have the
15 ability to revisit, revise, or, you know, take
16 away entirely the emissions performance standard
17 at such time as there's an operable cap structure
18 in place.

19 In terms of application of the EPS we
20 said it would be applicable to all PUC
21 jurisdictional load-serving entities which
22 includes electric service providers and CCAs,
23 community choice aggregators; that we would need
24 to develop a slightly different process for ESPs
25 and CCAs relative to the IOUs, because our

1 regulatory authority is slightly different in
2 those cases.

3 And then there's also a provision in SB-
4 1368 that allows multijurisdictional utilities
5 that are subject to similar regulations in other
6 states to apply to us for an exemption from this
7 particular requirement in California.

8 What we proposed was the emissions
9 performance standard be administered on a gateway
10 basis, which means at the time that a load-serving
11 entity is proposing to buy or build a facility, we
12 would do a review at that point, upfront. And
13 that the standard would be applied to the
14 reasonably projected emissions rate in pounds of
15 CO2 per megawatt hour for over the life of the
16 commitment.

17 Things that are covered include utility-
18 owned generation, repowered facilities, new and
19 renewal contracts for, or power purchase
20 agreements. We suggested that all current
21 contracts should be grandfathered until such time
22 as they were renewed. And then at that point they
23 would be subjected to the EPS screen. That's a
24 controversial issue which I'll come back to.

25 As Gary already said, it applies to

1 commitments of five years or longer, and baseload
2 resources with capacity factors of at least 60
3 percent.

4 We also suggested in the staff proposal
5 that there be an exemption for small contracts
6 under 25 megawatts. We did not deal with the
7 question of whether this could be applied to the
8 qualifying facilities. And instead asked for
9 legal briefing on that issue. And, you know,
10 we're in the process of reviewing those briefs and
11 deciding what to do about that.

12 We also said -- we suggested that the
13 application to cogenerators should be done using a
14 methodology that was proposed by the PUC and the
15 California Association of Cogenerators. Basically
16 it's a methodology to account for the thermal
17 load. So we suggested that.

18 We also said renewables play by the same
19 rules as anybody else. They have to submit their
20 emissions characteristics and go through the
21 screen.

22 And finally, we suggested a reliability
23 or cost exemption which the statute asks us to
24 consult with the ISO on this issue. And we
25 suggested that we could do a case-by-case review

1 if there was need to issue an exemption on
2 reliability or cost issues.

3 As far as what the standard actually is
4 that we're talking about, it's based upon some
5 review which actually was done mostly by Energy
6 Commission Staff of the average emissions from
7 various gas-fired resources that are currently in
8 California. And we looked at sort of an average
9 there and suggested that 1100 pounds of CO2 per
10 megawatt hour was a reasonable approximation of
11 the typical gas facility in the WECC region.

12 And we also recommended a research and
13 development exemption for essentially the case
14 where someone would propose a sequestration ready
15 facility that -- there's a provision in the
16 statute that allows projects that are sequestering
17 carbon on day one to qualify. But didn't say
18 anything about how we might get from our current
19 technology to that situation.

20 So the staff recommended that there be a
21 potential for exemptions on a case-by-case basis
22 if it was warranted, based on, you know, a showing
23 of technological feasibility and that sort of
24 thing.

25 As far as how to apply the standard and

1 to what kinds of contracts and facilities, we said
2 if it's a unit-specific contract, each unit
3 qualifies; that's pretty obvious. Multi-unit
4 contracts, you look at each individual unit.

5 On the situation where there are
6 renewables blended with other resources we
7 suggested that the screening be done on a blended,
8 weighted average of the two resources. And if
9 that passed the screen, fine. And if it didn't,
10 it didn't.

11 The next thing was unspecified resource
12 contracts, which means contracts with non-unit-
13 specific contracts. The staff proposal was to
14 essentially rely on the CEC's net system power
15 calculation to whatever version of that was in
16 place at the time that the screening was being
17 done. That we would rely on that to determine
18 whether a non-specified contract did or did not
19 pass the screen.

20 And then finally we suggested treating
21 no renewable power, meaning renewables that sold
22 off their renewable energy certificates, we treat
23 that pretty much the same as unspecified power.

24 Monitoring and enforcement. As I said,
25 we were suggesting an upfront review. This works

1 best, obviously, for investor-owned utilities
2 because it's already a provision of our regulation
3 of their procurement portfolios, that if they're
4 signing contracts of five years or more, the PUC
5 does an upfront review anyway. So it was entirely
6 logical that we should just include the EPS screen
7 in that same review process.

8 Less obvious for the electric service
9 providers and CCAs, but -- and then as far as
10 monitoring, we explicitly said we would monitor
11 for what we were calling slicing and dicing.
12 Multiple short-term commitments with the same
13 resource, like, you know, four-and-a-half-year
14 contracts, or alternatively, because we proposed a
15 size exemption, multiple small contracts with the
16 same resource.

17 And as far as flexibility devices, we
18 really didn't offer too many. We said that since
19 this is an interim standard and it's a commitment-
20 by-commitment review, we would not offer any
21 offsets or market price safety valves at this
22 time. But we would, as I said before, offer an
23 exemption on a case-by-case basis for reliability
24 or cost showings if there's something dire that we
25 aren't anticipating. We would allow that.

1 So now I come to the controversial
2 issues associated with the staff proposal. As we
3 were reviewing comments it became clear that sort
4 of an assumption underlying a lot of the comments
5 was one of two options. Either you do a review of
6 a contract or you do a review of the actual
7 facility with which the contract is being written.

8 And basically this came up initially
9 when we were talking about how do you define
10 what's a baseload resource. Because obviously if
11 you have a slice of output from a particular power
12 plant that's not 60 percent of the time of that
13 unit, you know, is it or isn't it considered
14 baseload.

15 The resource, itself, would be
16 considered baseload probably. But, you know, the
17 slice of the contract that one particular entity
18 was buying wouldn't necessarily be that.

19 And so we were trying to figure out, you
20 know, what was the intent here. And we came up
21 with the conclusion that really the intent was
22 we're looking at the resource. We want to know
23 what is the underlying emissions characteristic of
24 whatever resource we're contracting with,
25 regardless of whether the actual contract is only

1 for 5 percent of the output or not.

2 But flowing from that, if you go with
3 the assumption that you're looking at the
4 underlying resources regardless of what the
5 contract is for, then that leads you to a conflict
6 with what we had proposed on the blended renewable
7 situation where, in that case, if you're looking
8 at, you know, the renewables separately in most
9 cases, it might be a wind turbine or something
10 that's not a baseload plant, so that would not
11 even be looked at. And then whatever firming
12 resource is looked at that's fossil-based may or
13 may not pass. But you can't really tell. So,
14 that's an issue that we're still struggling with.

15 And then the other is on no renewable
16 power, if you're looking at the underlying
17 resource it doesn't really matter if the renewable
18 energy certificate is sold off or not. If the
19 resource is that and it's renewable, then it
20 should -- most likely it would pass.

21 The other majorly controversial issue in
22 comments was about the unspecified resource issue
23 and how we account for emissions from resources
24 that might be from a mix of resources owned by,
25 you know, a generating company or contracted for

1 by a marketer or something like that.

2 That's just something we're still very
3 much struggling with. And I think the CEC Staff
4 is, too. And so this is an area where we would
5 really -- whatever we come up with, if we can come
6 up with a geographic methodology or something,
7 we'd really like it to be consistent. But we
8 don't have the answer yet I don't think.

9 There were also a lot of issues coming
10 up around clarifying what did we mean when we said
11 something was deemed compliant, or grandfathered
12 into the, you know, if it was an existing resource
13 or existing contract.

14 The statute makes special provisions for
15 combined cycle gas turbines that we didn't fully
16 address in our staff proposal. We didn't also do
17 a particularly good job of addressing what happens
18 when you make a change to a plant. Does that get
19 screened or not? Is that something that gets
20 reviewed again at that time? Or if it's with a
21 facility that was deemed compliant, is it still
22 okay. It's a big issue.

23 New contracts with facilities -- this is
24 very controversial -- with facilities that are
25 existing. I mean there's no change to the

1 facility, but by virtue of the fact that they're
2 renewing a contract. Does that mean -- is that
3 fair to essentially require it to pass through the
4 screen at that time.

5 And then there's this issue of if we're
6 reviewing contract renewals, there's an equity
7 issue there because if we are also trying to look
8 at utility-owned or utility-retained generation on
9 the same basis, obviously there's no contractual
10 relationship there. So an investor-owned utility
11 plant would never get reviewed again, because
12 there's no contract renewal associated with it.
13 So that's an issue.

14 And then finally, the actual emissions
15 performance rate level, 1100 pounds of CO2 per
16 megawatt hour, parties are all over the board.
17 There are people proposing much lower amounts and
18 much higher amounts. So that continues to be a
19 major issue.

20 Other issues that weren't necessarily
21 controversial, but we think may need to be
22 modified based on further discussions about SB-
23 1368, is whether we can or should pre-approve
24 renewable technologies that are obviously going to
25 pass the screen no matter what.

1 This issue I already talked about some
2 about the research and development exemption,
3 there's arguments on both sides about whether the
4 statute does or does not allow for such a thing.
5 Same thing with the size exemption. I don't think
6 a lot of people are hugely exercised about that,
7 but it's definitely still an issue.

8 So, as I said at the beginning, our goal
9 is definitely one consistent statewide emissions
10 performance standard. We think that was the goal
11 of the Legislature and that's what we want to try
12 to achieve.

13 We're feeling like in a little bit of an
14 awkward position because by virtue of the
15 timeframes defined in the statute, we have to go
16 first. And it means that not all of the
17 discussions that are happening here in this forum
18 may be fully fleshed out by the time we have to
19 actually adopt something.

20 But, as I said, I'm here to listen and
21 we'll do our best to coordinate both with the CEC
22 Staff, as well as with the ARB going forward.

23 And that's all I've got.

24 ASSOCIATE MEMBER GEESMAN: Julie, I had
25 a fairly basic question.

1 MS. FITCH: Sure.

2 ASSOCIATE MEMBER GEESMAN: And it
3 relates to the typology or definitions that you're
4 using between units and facilities. What's a
5 unit? What's a facility?

6 MS. FITCH: I think I was using them
7 interchangeably.

8 ASSOCIATE MEMBER GEESMAN: Okay, thanks.

9 PRESIDING MEMBER BYRON: Thank you, Ms.
10 Fitch. I think we'll go ahead and get through our
11 opening statements as quickly as we can. Chris.

12 DR. TOOKER: We have a few individuals
13 who came in late and didn't get copies of the
14 questions or the agenda. We've made extra copies
15 if anybody in the audience needs those.

16 PRESIDING MEMBER BYRON: Okay, thank
17 you.

18 DR. TOOKER: Again, the questions and
19 the agenda.

20 PRESIDING MEMBER BYRON: All right, so
21 additional agendas of information are on the table
22 out front.

23 Next, public agency comment opening
24 statement, Chuck Shulock from Air Resources Board.

25 MR. SHULOCK: Thank you very much and

1 good morning, Commissioners and Staff and members
2 of the audience. I don't have a technical
3 presentation so I'll just speak from here.

4 We're here to signal our interest and
5 participation in this proceeding. For those of
6 you, I see folks in the audience that were at the
7 PUC carbon cap proceeding, and I was there, along
8 with Mike Scheible, our Deputy Executive Officer,
9 and other members of our staff. If you went to
10 the CEC greenhouse gas inventory workshop, there
11 were ARB folks there. And if you went to the ARB
12 recent workshop on reporting and inventory, there
13 were CEC Staff there. So this is -- you'll be
14 seeing a lot of us together on these proceedings.
15 And that's illustrative of the objective here
16 which is to move forward in a consistent fashion
17 to implement all of the mandates that are here in
18 front of the various agencies.

19 ARB's role was described by staff. We
20 will be designing and implementing a broad mix of
21 direct regulations and market-based approaches to
22 reduce greenhouse gas emissions in the state.

23 Major deadlines for that process are by
24 January 1 of 2009 we need to issue what's called a
25 scoping plan that lays out our suggested approach.

1 What regulations, what direct regulations on
2 particular sources or sectors; the outlines of a
3 market-based program for particular sources or
4 sectors.

5 This scoping plan will say, here's what
6 it is that ARB proposes to do with the authority
7 granted under AB-32, in order to achieve the
8 reductions called for under the bill.

9 One portion of that will certainly be
10 the electricity sector. So we're joined with the
11 Commission and with the Public Utilities
12 Commission in a common effort to figure out what
13 is the best way to achieve greenhouse gas
14 reductions from the utility sector in a manner
15 that's cost effective, efficient and protects the
16 need to provide safe and reliable power.

17 SB-1368 is an important part of the
18 state's overall program to control greenhouse
19 gases. And as you've been hearing, the purpose
20 here is to do that. We're certainly very
21 interested in that. We will be, I think, less
22 involved in a lot of the details that you're
23 talking about here, because these are much more
24 matters within the expertise of the Energy
25 Commission and the PUC. But we certainly want to

1 be following this from the standpoint of how does
2 it fit into the overall broader program that is
3 going to be designed and implemented.

4 We fully expect, for instance, that the
5 electric utility sector will be included in an
6 ultimate trading market. And at the carbon cap
7 proceeding that the PUC hosted a week ago, they
8 were talking about the development of an approach
9 in that proceeding to provide guidance to us as
10 ARB goes forward with ultimate regulations related
11 to a market.

12 How to structure any such program will
13 require the joint efforts of the ARB, the CEC and
14 the PUC. And the end result under AB-32 will be a
15 unified program that applies across the utility
16 sector. The details of how to do that obviously
17 are complex, and there's a lot of expertise in
18 this room and everywhere around the state. And
19 these details will be worked out in these common
20 proceedings. And that's why you'll be seeing ARB
21 Staff participating in the various workshops and
22 PUC and CEC Staff working along with us.

23 So the main message I want to send is
24 that we have very much a unified front here as we
25 go forward. The Air Resources Board recognizes

1 the expertise and traditional roles of the other
2 agencies. We're looking to the PUC and the CEC
3 for guidance. And we're looking for a solution
4 here that meets everybody's common interest.

5 And I guess just one other point about
6 AB-32 as it relates to SB-1368. In a way AB-32
7 will provide a backstop. SB-1368 is sort of
8 narrowly focused on particular pieces of the
9 puzzle. And it's very important to take care of
10 those and to achieve the objectives under 1368,
11 but for portions of it that can't be captured
12 under SB-1368, that's where AB-32 provides the
13 authority for a broader program that provides a
14 comprehensive look at the electricity sector.

15 So, that broader program will be
16 emerging and will provide a way to cover issues or
17 sectors or concerns that, for one reason or
18 another, don't fit within the SB-1368 provisions.

19 So, again, I just want to signal that
20 we're very interested. We will be following this.
21 We will be inviting all of you to participate in
22 any proceedings that ARB has that are relevant for
23 the electricity sector. And very much appreciate
24 the opportunity. Thank you.

25 PRESIDING MEMBER BYRON: Thank you,

1 Mr. Shulock. Now really the reason we're here is
2 to begin hearing from stakeholders. We've listed
3 a couple here, but, of course, we'd like to hear
4 from everyone that would be interested in
5 providing some opening opening statements.

6 And the first one up is the CMUA,
7 California Municipal Utilities Association, Bruce
8 McLaughlin. Bruce, would you like to go first?

9 MR. McLAUGHLIN: Yes, thank you,
10 Commissioner. Bruce McLaughlin, CMUA. Actually
11 our presentation is comprised of two short
12 presentations, board members. The first one will
13 be Susan patterson, the Vice President of SMUD.
14 The second one will be Pat Kolstad, Councilmember
15 for the City of Santa Clara.

16 The point of their presentation is to
17 discuss the decisionmaking procedures of publicly
18 owned electric utilities. We think it's relevant
19 to this conversation. Sue.

20 MS. PATTERSON: Good morning; my name is
21 Susan Patterson and I currently serve as the Vice
22 President of the SMUD Board of Directors, the
23 Sacramento Municipal Utility District.

24 SMUD is the fifth largest publicly owned
25 utility in the nation and the second largest in

1 the State of California. SMUD serves a 900-
2 square-mile territory which includes most of
3 Sacramento County, a little sliver of Placer
4 County. And our service area includes about 1.4
5 million people, and about 580,000 customers.

6 SMUD has been, and continues to be, a
7 leader in advancing environmental stewardship in
8 the utility industry. This has included
9 leadership roles in energy efficiency, renewable
10 energy sources, air quality impacts and global
11 climate change. And by the way, we were just
12 voted the number one utility by J.D. Power and
13 Associates in California for customer service, so.

14 Under the MUD Act the Board serves as
15 the local regulatory authority for SMUD. We have
16 an obligation in executing a regulatory oversight
17 function to follow both state and federal laws,
18 just as the CEC does.

19 The SMUD Board has articulated its
20 strategic and oversight policies to the staff
21 through a series of formal publicly vetted
22 strategic directives that include the Board's
23 expectations regarding compliance with federal,
24 state and local laws and regulations, as well as
25 our own goals to reduce the district's impact on

1 the environment.

2 SMUD takes compliance with laws and
3 regulations seriously; and the Board expects that
4 the staff will fully comply with such
5 requirements, including those outlined in SB-1368.

6 As a public agency SMUD's decisions,
7 including resource procurement decisions, are made
8 in the full light of public scrutiny. The SMUD
9 Board expects that requirements such as those,
10 those that would be imposed by SB-1368, would be
11 embedded within our solicitations and contracts
12 for new baseload power resources.

13 Under the Board's delegation to the
14 staff, purchase power contracts of greater than
15 five years require Board approval, as would
16 authorizations for the construction of a large
17 power plant or a power project. Therefore, the
18 Board will have the opportunity in a public
19 setting to question staff regarding SMUD's
20 compliance with these types of requirements before
21 such resources are procured.

22 Additionally, the public, as always, has
23 the opportunity to provide comment on any of our
24 proposed contracts or our potential construction
25 projects.

1 In addition to the direct Board
2 oversight of such procurements, SMUD has an
3 internal audit function that reports to the Board
4 and that provides assurances of staff compliance,
5 as well.

6 SMUD is a public agency that executes
7 its decisions through a rigorous open public
8 process. The Board is responsible to the citizens
9 of Sacramento to assure that we comply with all
10 applicable laws and regulations, including SB-
11 1368, and its implementing regulations, as well as
12 the policies that are adopted by the Board.

13 The Board takes these responsibilities
14 seriously and is proactive in assuring that the
15 staff understands and complies with our
16 expectations. In particular, all power contracts
17 with the term of five or more years, as well as
18 all new power plants or power plant modifications,
19 require Board approval in open session, after
20 notice, and an opportunity to be heard is afforded
21 to the public.

22 Thank you very much.

23 ASSOCIATE MEMBER GEESMAN: Sue, I've got
24 a couple questions.

25 MS. PATTERSON: Yes.

1 ASSOCIATE MEMBER GEESMAN: You've been
2 on the Board at SMUD for awhile?

3 MS. PATTERSON: Eight years.

4 ASSOCIATE MEMBER GEESMAN: And SMUD
5 sells bonds into the public capital markets?

6 MS. PATTERSON: Yes.

7 ASSOCIATE MEMBER GEESMAN: So you're
8 covered by the federal securities laws in the sale
9 of those securities?

10 MS. PATTERSON: I presume, yes.

11 ASSOCIATE MEMBER GEESMAN: And the Board
12 has to approve the disclosure document when you
13 sell those securities, does it not?

14 MS. PATTERSON: Yes.

15 ASSOCIATE MEMBER GEESMAN: You make a
16 variety of warranties in terms of compliance with
17 the laws and promises that your disclosure
18 documents fairly represent SMUD's condition?

19 MS. PATTERSON: Yes, I believe so. Yes,
20 yes.

21 (Laughter.)

22 MS. PATTERSON: Yes, we do.

23 ASSOCIATE MEMBER GEESMAN: So if you
24 violated those warranties or representations you'd
25 be in violation of securities laws?

1 MS. PATTERSON: In big darn trouble,
2 yes.

3 ASSOCIATE MEMBER GEESMAN: Now, to your
4 knowledge, SMUD also is subject to the various
5 fraudulent business practices or unfair
6 competition statutes of the State of California.

7 MS. PATTERSON: Yes.

8 ASSOCIATE MEMBER GEESMAN: Thanks very
9 much.

10 MS. PATTERSON: Thank you.

11 PRESIDING MEMBER BYRON: Thank you very
12 much for coming here today, Ms. Patterson.

13 COUNCILMAN KOLSTAD: Thank you very
14 much, Commissioners. I'm Pat Kolstad. I'm on the
15 City Council in Santa Clara, California.

16 When I was thinking of 1368 a couple of
17 things occurred to me. The first is that it's
18 very natural for us in Santa Clara to comply with
19 any law or regulation that we're required to meet.
20 Whether it's maintaining our city jail according
21 to the code, or enforcing the Uniform Building
22 Code, or dealing with 1368 when it takes effect,
23 we'll be onboard with whatever the regulations
24 are.

25 In Santa Clara our local councilmembers

1 regulate all areas of local government, and we
2 always have, and without any problem, whether it's
3 the water utility, the electric utility. We've
4 always tried to stay ahead of the curve on
5 providing pure water; always exceeds every
6 standard that we're required to meet.

7 Our electric utility currently has 30
8 percent renewables. And we spend millions of
9 dollars on energy efficient programs. And this is
10 driven by the city council.

11 Local decisionmaking bodies, I think
12 whether they're a utility board like SMUD, or a
13 city council like Santa Clara's, I think are the
14 appropriate venue to make sure that our city staff
15 conforms to the law.

16 I think the key is if the regulations
17 are clear and understandable the local bodies can
18 very easily make sure that the rules are followed.
19 And we've had a history of that.

20 You know, in addition to being on the
21 City Council of Santa Clara, I'm the Chairman of
22 the Northern California Power Agency. And I
23 noticed the other day when we had an executive
24 board meeting that over half of the board members
25 are ex-policemen. I was a policeman for 32 years.

1 So we really like to make sure we comply with the
2 rules.

3 (Laughter.)

4 COUNCILMAN KOLSTAD: And that happens at
5 our local level and in JPAs that we belong to.

6 So, thanks for the opportunity to speak
7 to you. To me it's very clear that local
8 decisionmaking bodies are where these kind of
9 decisions should be made. Thank you.

10 PRESIDING MEMBER BYRON: Mr. Kolstad,
11 thank you for being here. If you would, just hold
12 for a moment. If we can take a few questions?

13 COUNCILMAN KOLSTAD: Sure.

14 ASSOCIATE MEMBER GEESMAN: During the
15 time you've been on either the Council or the NCPA
16 board, have you sold bonds?

17 COUNCILMAN KOLSTAD: Yes, sir.

18 ASSOCIATE MEMBER GEESMAN: And when you
19 do that you're asked to make a variety of
20 representations and warranties by your bond
21 counsel, are you not?

22 COUNCILMAN KOLSTAD: Yes, sir.

23 ASSOCIATE MEMBER GEESMAN: And they make
24 very clear that if you violate those
25 representations or warranties you're going to be i

1 a world of hurt?

2 COUNCILMAN KOLSTAD: They absolutely do.

3 ASSOCIATE MEMBER GEESMAN: Thank you.

4 PRESIDING MEMBER BYRON: Thank you, Mr.
5 Kolstad, for being here.

6 COUNCILMAN KOLSTAD: Thank you.

7 PRESIDING MEMBER BYRON: The next
8 organization that we have listed to make
9 stakeholder comments is the Natural Resources
10 Defense Council, NRDC. Audrey Chang, welcome.

11 MS. CHANG: Thank you. Good morning.
12 I'm Audrey Chang with the Natural Resources
13 Defense Council. Thank you, Commissioners and
14 staff, for allowing me the opportunity to speak.
15 And it's great to see this many people here; it's
16 definitely a big issue that we are concerned
17 about, and it's good to see that there's so much
18 interest, as well.

19 I just have a few slides prepared. I
20 didn't want to go into too much detail, and look
21 forward to the workshop discussion period. But
22 did want to flag a few issues that we see that are
23 of the main concern to us. So just really quickly
24 I'll just run through some of those issues.

25 We see, as the primary goals of SB-1368

1 and the emissions performance standard are to
2 primarily protect consumers from the significant
3 risks associated with additional investments in
4 highly greenhouse gas intensive generating
5 technologies, as defined by SB-1368. So the
6 baseload facilities with average annual capacity
7 factor of greater than 60 percent.

8 And those risks include both financial
9 risks and reliability risks. So we've kept this
10 goal really first and foremost in our minds when
11 we've been thinking about how to best implement
12 the standard.

13 Another primary goal of ours is really
14 keeping in mind administrative simplicity
15 throughout the process. And we don't want it to
16 be a burden either on the administering agencies
17 or the entities that are subject to the standard.

18 Some of the key features of the
19 emissions performance standard that we see, as
20 several other people have stated, we also --

21 (Teleconference interference.)

22 MS. CHANG: Could I ask whoever is on
23 the phone, please mute your phone. I'm getting
24 some feedback. Thank you.

25 As other speakers have noted, we also

1 support a statewide consistent standard and really
2 encourage everybody to strive towards that.

3 We also emphasize that the standard, as
4 written in SB-1368, has specifically not -- feel
5 specific it is an emissions performance standard.
6 That has some of the implications for some of the
7 constitutionality concerns that have been raised
8 by some parties.

9 We also note that the statute indicates
10 that facilities should be evaluated based on their
11 design and intended performance. And I think that
12 will address some of the concerns that have been
13 raised as to which facilities the standards apply
14 to.

15 Key feature that Julie brought up that
16 has been of debate, but we see as a very key
17 feature of SB-1368 is that the standard is, as we
18 see it, the statute does require that it apply to
19 the underlying facilities behind a contract.

20 And finally that all existing combined
21 cycle natural gas turbines are deemed in
22 compliance with the standard, so it's not aimed to
23 take those out of operation.

24 A few notes on long-term financial
25 commitments. There have been some issues raised

1 in the staff paper and discussed in other forums.
2 Just wanted to present our views here. We do see
3 that one applies to new ownership investments, and
4 that means both new facilities, but then also new
5 investments in existing facilities. And we look
6 forward to discussing some of that with others in
7 the discussion portion.

8 It also does apply to new and renewed
9 contracts. I think that's very clear in the
10 statute. And it does not apply retroactively.

11 The issue of upfront approval and
12 enforcement. We see this as a very key feature
13 that will most effectively be able to protect the
14 state's consumers against financial and
15 reliability risks. And we see this as being key
16 that this is done before the commitment is made.
17 And by doing this it provides certainty that the
18 commitment is in compliance with the standard and
19 thus minimizes any sort of disruptions that is
20 found -- if in other sort of compliance
21 approaches. If a commitment was found to be not
22 in compliance it makes it much more difficult to
23 then go back and undo that commitment.

24 Likewise it also minimizes ongoing
25 monitoring and enforcement. So that reduces both

1 sort of reliability risks and also administrative
2 complexity. And then we also believe that all
3 load-serving entities in the state should be
4 subject to the same enforcement approach, though
5 we are flexible to talking about different ways in
6 which this upfront approval can take place.

7 ASSOCIATE MEMBER GEESMAN: You're
8 assuming a pretty effective policeman in terms of
9 the upfront approval?

10 MS. CHANG: Yeah, and we're confident in
11 our state agencies to do that.

12 ASSOCIATE MEMBER GEESMAN: I guess you
13 don't have as much experience with our state
14 agencies as --

15 (Laughter.)

16 MS. CHANG: Well, we think that you can
17 do it.

18 ASSOCIATE MEMBER GEESMAN: To be more
19 serious, you are assuming a certain infallibility
20 of the upfront review process.

21 MS. CHANG: Well, to some degree. I
22 mean, of course, there will need to be some amount
23 of after-the-fact enforcement. But we believe
24 that if upfront that if approval is given to a
25 commitment before it is made, that there is more

1 of a guarantee there that the commitments will be
2 in compliance and minimizes the need for that
3 after-the-fact review.

4 ASSOCIATE MEMBER GEESMAN: I have to
5 tell you, from my experience in the securities
6 markets, that's seeking permission and creating an
7 enormous transfer of liability to what's likely to
8 be a fairly ineffectual governmental entity. And
9 it would seem to me a lot more lax than a
10 requirement that visited a fair amount of fire and
11 brimstone down on someone that violated their
12 self-certification.

13 We have entire areas of compliance in
14 the financial world that greatly relies on the
15 threat of torture and punishment if you're caught
16 cheating. Why wouldn't that be more effective
17 here?

18 MS. CHANG: I think part of it is also
19 the transparency to other stakeholders, as well.
20 But it's also one of our primary concerns is that
21 it -- well, I'd be open definitely to talking more
22 about this. But I mean, some of the issues in our
23 mind is we're questioning whether or not that is
24 sufficient enough.

25 ASSOCIATE MEMBER GEESMAN: Thank you.

1 MS. CHANG: So just to touch briefly on
2 the importance that we see that SB-1368 requires
3 the standard to be applied to each underlying
4 facility, we think the statute definitely does
5 require that. And that does, as Julie said, have
6 implications for how the standard is applied.

7 In particular we do want to emphasize
8 that we do not believe in any way that SB-1368
9 allows for any blending of emissions.

10 And lastly, on the treatment of system
11 power, as the statute says the treatment should be
12 consistent with the treatment of specified units.
13 And I think the thing here that I want to
14 emphasize is that we all need to consider the
15 consequences of different treatments of system
16 power.

17 Namely if looking at two scenarios of
18 system power is deemed to pass the EPS, a
19 significant loophole is created because we see
20 this as creating a really perverse incentive to
21 hide or otherwise not disclose information about
22 high emitting resources. And therefore, consumer
23 would not be protected from the financial and
24 reliability risks of depending on those resources.

25 On the other hand, if system power is

1 deemed to not pass the standard, there is a
2 positive incentive there that's created to improve
3 the emissions accounting throughout the system.
4 And as Chuck Shulock mentioned there is AB-32
5 that's coming down the line that will help to
6 capture the overall emissions of the electricity
7 sector.

8 So, I look forward to sharing additional
9 thoughts with others here, and to engaging in a
10 productive discussion. Thank you.

11 PRESIDING MEMBER BYRON: Thank you, Ms.
12 Chang. The reason that staff has provided seats
13 at the table is just to make it more quick to get
14 to a microphone. You're welcome to sit there or
15 not; that's up to you. And we'll just kind of see
16 how the discussion goes.

17 At this time I'd like to open it up to
18 other stakeholders that would like to present some
19 opening statements. If you would, please
20 volunteer at this time, we'd love to have you.

21 Please. Please come forward and
22 introduce yourself.

23 MR. HAHN: My name is Jeffrey Hahn; I'm
24 with Covanta Energy Corporation. And I'm an
25 environmental engineer so I may have to get all

1 the terms from the CEC; it's been awhile since
2 I've been here.

3 As an introduction, Covanta Energy
4 Corporation in California operates renewable
5 sources of energy. We have four landfill gas
6 energy plants; four woodwaste energy plants; and
7 one municipal solid waste energy plant in
8 Stanislaus County.

9 They're all under the renewable
10 portfolio standard and they're all under 25
11 megawatt net to the utilities. We sell to PG&E,
12 San Diego Gas and Electric and Southern California
13 Edison.

14 Before AB-32 passed we had started
15 considering how we reported our emissions. After
16 it passed we joined the California Climate Action
17 Registry. And we have successfully submitted to
18 CCAR our six greenhouse gases yesterday. They're
19 under the certification process now and hopefully
20 our 2005 emissions will be certified by the end of
21 the year.

22 So we know generally what you're looking
23 for in terms of the emissions performance
24 standard. As a company in California we're under
25 your standard.

1 The one item I want to bring up, and one
2 important item for the state, is one of our
3 facilities, our waste energy plant in Stanislaus
4 County that serves the City of Modesto and the
5 County of Stanislaus and the small cities on the
6 west side of Newman, Patterson, Crowe's Landing,
7 the fuel that we get, since California and the
8 Integrated Waste Management Board is trying to
9 promote more plastics recycling, municipal solid
10 waste still has, while it's over two-thirds
11 biogenic, it still has one-third or less component
12 of fossil.

13 And with that, in burning that waste we
14 do have carbon emissions that are a little bit
15 over your standard. We're right now at 0.599
16 metric tons of CO2 per megawatt hour. So we're
17 close, but we're not quite there.

18 And we have a submission today that
19 we'll hand you -- I'm here with a colleague, Pat
20 Holley -- that we are requesting you consider.
21 And we'll stay here for the discussion. Your
22 questions in section 4 on netting, and the first
23 one we'd like to have you consider is that when we
24 use, for example with Stanislaus, and we sell the
25 power to PG&E, the 130,000 megawatts hours that we

1 sell to PG&E, they would have to produce from
2 another source, either with their actual CO2
3 emission, or some source that would now -- to your
4 standard.

5 And if we actually count that netting,
6 we're down to 0.343 for Stanislaus, so we'll be
7 under your standard. And that allows the
8 environmental benefits for waste energy versus
9 landfilling. It allows Stanislaus County and the
10 City of Modesto to meet its recycling commitments.
11 And it's very important that that be allowed and
12 looked at for the nonbiogenic portion. Because
13 you'll find other treatments of municipal solid
14 waste will generate that portion of fossil, as
15 well.

16 But it's important on a total
17 environmental picture, as well as a renewable
18 picture, to be able to burn that fuel instead of
19 looking at more landfilling and the effects of
20 landfilling with the escape of methane that's not
21 captured in CO2, that's not captured from the
22 landfill, as well as burning that landfill gas
23 that is captured in a flare.

24 The second is that we do recycle about
25 5000 tons a year of steel. You know, there is a

1 credit, a greenhouse gas credit for the reduction
2 of greenhouse gases in the production of recycled
3 steel rather than from the basic ingredients of
4 steel.

5 And finally, like I said in EPA's
6 decision support tool, this is all in the
7 submittal that we'll give you to the staff, they
8 look total at lifecycle and a waste energy plant
9 is much better environmentally than a landfill in
10 total.

11 And so we want to look at potentially
12 netting the emissions that we have versus what
13 would come from a landfill. Again, as I said, the
14 uncaptured gas, gas that has to be flared; and
15 then the gas that produces energy at a landfill.

16 And that's generally a brief
17 introduction. We're a small player, I guess we
18 can be called the local garbagemen, compared to
19 the utilities. And I'll be glad to answer any
20 questions.

21 PRESIDING MEMBER BYRON: Thank you, Mr.
22 Hahn. Any other stakeholders that would like to
23 make opening statements?

24 Please, come forward, introduce
25 yourself.

1 MR. COX: Thanks so much for the
2 opportunity. My name's Rory Cox and I'm here to
3 represent the Ratepayers for Affordable Clean
4 Energy. We're a coalition of community
5 environmental groups and environmental justice
6 groups.

7 And I'm here to talk about the case of
8 lifecycle emissions and what role that has to play
9 in this proceeding and in this law.

10 We find that accounting for lifecycle
11 emissions in the production of the energy source
12 of liquified natural gas is -- a very urgent case
13 can be made to look at that in implementing this
14 law.

15 And the publicly owned utilities play a
16 major role in this, particularly the LADWP, which
17 has signed a letter of intent to buy energy from
18 an LNG terminal.

19 And three separate studies have now
20 shown that the greenhouse gas emission penalty
21 from importing LNG over domestic natural gas is
22 anywhere from 18 to 44 percent extra greenhouse
23 gas emissions. So it's a significant amount that
24 LNG imports would emit over what you get from a
25 combined cycle plant.

1 And we have that data. I would urge you
2 to also study this issue and work that into your
3 EPS. And I'd be glad to talk more about this
4 during the roundtable. Thanks so much.

5 PRESIDING MEMBER BYRON: Thank you, Mr.
6 Cox. Anyone else? Please, sir. If you wouldn't
7 mind giving your card or your name and information
8 to the court reporter, it makes his job a little
9 bit easier. Please introduce yourself.

10 MR. CZAMANSKE: My name is David
11 Czamanske and I'm here on behalf of the Angeles
12 Chapter of the Sierra Club; I'm a member of both
13 the global warming committee and the executive
14 committee of that chapter of the Sierra Club,
15 which represents Los Angeles and Orange Counties
16 in southern California.

17 I would just like to respond. I don't
18 have a specific presentation to make to you, but
19 I'd like to respond to a couple comments that were
20 made this morning regarding self-certification;
21 the comment made by the gentleman from Santa
22 Clara. And I think the implication of the
23 questions from Commissioner Geesman about bonding
24 requirements and so on.

25 We have an example in southern

1 California where a contract renewal came up. Now,
2 such a contract renewal does not require any
3 public declaration with the Securities and
4 Exchange Commission, et cetera. But this contract
5 renewal was for renewing the contract with the
6 Intermountain Power Plant in Delta, Utah, by six
7 southern California cities that utilize that
8 power. Namely, Los Angeles, Riverside, Anaheim,
9 Burbank, Pasadena and Glendale.

10 Because this law was about to become
11 effective on January 1st, some of the utility
12 departments in those cities attempted to, in fact,
13 did bring the issue to their city council without,
14 what I feel is, a full and public disclosure of
15 the implications of renewal of those contracts.

16 And the proposal was to renew the
17 contracts from the years 2027 to 2044, a long,
18 long time in the future. And as far as some of us
19 could determine, the attempt was to renew those
20 contracts before 1368 became effective, which
21 naturally many of us were opposed to. And we did
22 succeed in, I think, sidelining that attempt. I
23 won't go into the details of that.

24 But, I want to bring to your attention
25 that although the city council in Santa Clara, the

1 SMUD Board of Directors may be quite attuned to
2 various requirements and complying in full with
3 various environmental regulations, I think it
4 would be a false assumption to assume that city
5 councils and utility districts across the State of
6 California are fully attuned as to all the
7 implications of what might be involved should they
8 take action such as contract renewal. I just give
9 that as one example.

10 So if you would move in the direction of
11 self certification, and I have no position one way
12 or another on that, I think it is imperative that
13 your Commission in pass such regulations that
14 would insist and require legally that city
15 councils and other decisionmaking bodies be fully
16 informed of all the implications of the actions
17 that they're taking.

18 Thank you very kindly.

19 ASSOCIATE MEMBER GEESMAN: Well, let's
20 say that the certification that they had to file
21 with the state needed to be adopted by the board
22 of governors or city council of whatever entity
23 was filing it, and it needed to include the
24 statement that there had not been a
25 misrepresentation or an omission of any material

1 facts in the certification; that the individuals
2 had exercised the appropriate level of diligence
3 to establish in their minds that the certification
4 was accurate, that they recognized that a breach
5 of that certification would constitute a breach of
6 the representations and warranties that they
7 commonly give under the securities laws of the
8 United States when they sell securities.

9 And that a breach of their certification
10 would represent a violation of Business and
11 Professions Code 17200 in terms of unfair business
12 practices. I think that would rivet their
13 attention to what they were certifying.

14 And I would suggest to you that would be
15 one heck of a lot more effective than having some
16 bureaucrat in this building one or two years out
17 of college looking at 500 pages of paper that he
18 or she has no possibility of fully understanding.
19 And then getting out a stamp, I don't think
20 they're made of rubber anymore, but a stamp saying
21 the State of California approves this.

22 I think that at least in terms of
23 reading the written filings I see a lot of faith
24 and confidence heaped upon the infallible state
25 policemen and not enough reliance placed on the

1 type of system that has Jeffrey -- Fastow or
2 Jeffrey Skilling in prison -- Jeffrey Skilling
3 about to go to prison, and Andrew Fastow in
4 prison.

5 MR. CZAMANSKE: Right.

6 ASSOCIATE MEMBER GEESMAN: Now, in
7 saying that I'm reflecting my concerns about the
8 capabilities of this agency to carry out that
9 function. I recognize the Public Utilities
10 Commission, for years and years and years, has
11 done a gatekeeper review of contracts.

12 They don't have as many regulatees as we
13 do. And they have a staff that is much better
14 organized to performing that function than we do.
15 So I don't make any inference as to their ability
16 to conduct that type of enforcement.

17 But I'm deeply skeptical about ours.
18 And I'm sorry to carry on so long.

19 MR. CZAMANSKE: Well, let me just
20 clarify. I'm not taking any position for or
21 against. I do appreciate what you've had to say,
22 and I think it sounds like it has a great deal of
23 experience and merit.

24 But, as I say, I'm not taking any
25 position for or against. Thank you.

1 PRESIDING MEMBER BYRON: Thank you, Mr.
2 Czamanske, thank you for being here.

3 MR. CZAMANSKE: You're welcome.

4 PRESIDING MEMBER BYRON: I thought I saw
5 another hand or two that were up with regard to
6 our opening comment segment here, stakeholder
7 comments. Was there another hand? All right,
8 going once.

9 I think what we're going to do then is
10 move to the next item on the agenda and that is
11 the roundtable discussion of the staff issues and
12 identification paper.

13 As I indicated, the staff's prepared an
14 excellent paper here that covers a number of
15 different topics. And by chapters, of course.
16 We've got procedural issues in chapter two; the
17 affected entities and financial commitments in
18 chapter three; emissions performance standards in
19 chapter four.

20 What I've asked them to do is to start
21 us back in the later chapters, chapters five and
22 six. And really I hope you all don't mind doing
23 this out of order, but it was so that we wouldn't
24 bog down in perhaps some of the significant, but
25 not as significant, issues with regard to

1 compliance and enforcement.

2 So, what we'll do is, Gary and staff,
3 with your help, we'll go through the issues that
4 you've outlined starting with chapters five and
5 six. Those of you that would like to participate
6 in the discussion, if there's room at the table
7 you're welcome to join us at the table. But, of
8 course, no one is limited here. The podium will
9 remain open and anyone can enter at that time.
10 We're just trying to facilitate a more speedy
11 discussion around these issues in the interests of
12 time.

13 We will go ahead and try and break;
14 we'll look for a spot just around noon or a little
15 bit before, because I fully anticipate that we're
16 not going to be done by noon.

17 Commissioner Geesman, anything else that
18 you'd like to add at this time? Julie and Chuck?

19 Then, we'll proceed with this
20 discussion. Gary, I'm going to turn it over to
21 you, and if you'll take us through that I
22 appreciate it very much.

23 MR. COLLORD: Well, okay. As you
24 mentioned, the first chapter that we've sort of
25 included in our summary of issues is chapters five

1 and six which deal with compliance and enforcement
2 approaches.

3 And we were hoping to be able to just
4 kind of, through this roundtable discussion, walk
5 through each of the issues, questions that are
6 outlined here, and see if we couldn't somehow come
7 up with an answer, or a conclusion to these
8 various issues.

9 And so if we want to just jump right in,
10 the first question raised concerning compliance
11 options is question 5.1, are there additional
12 attributes of a compliance mechanism that should
13 be considered that haven't been addressed in the
14 issues identification paper.

15 MR. McLAUGHLIN: Gary, Bruce McLaughlin,
16 CMUA. According to our agenda we were going to
17 discuss the procedural aspect first. If that's
18 going to be left for later in the proceeding,
19 that's okay, but it's absolutely an essential
20 issue for us. And we'll be discussing it,
21 correct?

22 MR. COLLORD: Certainly, yeah. I guess
23 there was a little bit of confusion about whether
24 you were going to address that issue as part of
25 your opening statement remarks. But I don't think

1 there's any problem with taking that up now --

2 PRESIDING MEMBER BYRON: No, not at all.
3 Mr. McLaughlin, it's not on my agenda. Please go
4 right ahead.

5 MR. JORDAN: Let me start up; I'm Jerry
6 Jordan with the California Municipal Utilities
7 Association. And we do have a major problem with
8 the schedule in this process. This is probably
9 the first time that I can remember that a
10 regulatory agency has actually started
11 implementing a piece of legislation before it
12 takes effect.

13 I want to say at the outset that a
14 member utility staff of ours has met extensively
15 with the Energy Commission Staff, and we greatly
16 appreciate the willingness of the staff and of the
17 Commission to talk to us on a lot of these issues.
18 So this is not meant as any criticism of either
19 the Commission or the staff.

20 But the schedule is pretty much
21 unworkable. We have almost 40 utilities who are
22 distributing electric utilities, and therefore
23 subject to the requirements under this
24 legislation.

25 Just dealing with the policy issues here

1 and getting a consensus among those kinds of
2 utilities who vary greatly from the City of Los
3 Angeles, which is very large, to the City of
4 Biggs, which is not very large. They have a lot
5 of diversity in types of power plants they have;
6 in the types of service territories they have; the
7 economics of the utilities. And it is a logistic
8 problem just getting them together to develop
9 consensus positions.

10 During the debate on the legislation
11 never was there a single bit of testimony that
12 indicated that the June 30th deadline in the
13 legislation was actually a February deadline. And
14 certainly none of the Legislature that voted on
15 that, there was not a committee analysis that
16 indicated that we never once heard a piece of
17 conversation from anybody that suggested that it
18 wasn't a June 30th deadline that we were dealing
19 with. And so, you know, that's a fairly quick
20 start.

21 We have provided for the record a legal
22 brief that we think clearly indicates that, in
23 fact, you do not have a February deadline; you do
24 have a June 30th deadline. I won't go into that,
25 but if you have questions Bruce McLaughlin is here

1 to answer any of those questions on the legal
2 analysis.

3 But I think as a matter of your own
4 record and getting the input that you need to do
5 the correct job on this, we really need to take
6 the full time till June 30th.

7 ASSOCIATE MEMBER GEESMAN: You know,
8 Jerry, usually on these types of issues we get a
9 letter from the author explaining that, oh, no,
10 no, no, no, what you thought was one word meant
11 something else. We haven't received anything from
12 the author. So I think that might be a productive
13 avenue for your pursuit.

14 MR. JORDAN: Well, just be a little bit
15 argument, you also didn't receive a letter from
16 the author saying that June 30th really meant
17 February.

18 ASSOCIATE MEMBER GEESMAN: So we've got
19 to rely on our own reading of what we think is the
20 plain language of the statute and the requirements
21 of the Office of Administrative Law. And it's not
22 a very tenable position to, even before the
23 legislation goes into effect, declare our
24 intention not to live under the deadline.

25 MR. JORDAN: Well, as I said, we have

1 filed a legal brief; and our legal interpretation
2 is certainly different from that.

3 PRESIDING MEMBER BYRON: Ms. DeCarlo, do
4 you prefer to -- would you like to comment on this
5 brief at this time?

6 MS. DeCARLO: Only if the Committee
7 would like staff's interpretation.

8 PRESIDING MEMBER BYRON: Yes, I would.

9 MS. DeCARLO: Okay. I mean we would
10 definitely love more time within this rulemaking.
11 There's a lot to be discussed. We feel that we
12 are capable of coming up with regulations within
13 the timeframe that we've laid out. But more time
14 would be nice.

15 If appropriate, however, I don't -- a
16 plain reading of the statute doesn't indicate
17 that. I agree with CMUA that the provisions are a
18 little difficult to reconcile. However, the plain
19 intent is that the enforcement be in place by June
20 30th. And in order to do that we need to get the
21 proposed regs adopted by the Commission and sent
22 to OAL by the middle of May.

23 MR. McLAUGHLIN: Bruce McLaughlin, CMUA.
24 The statute does not say that the enforcement
25 mechanism shall be in place by June 30th. It says

1 that the Energy Commission shall enforce the EPS
2 immediately upon establishment.

3 And so we pointed out in our brief that
4 that's actually impossible to do, even according
5 to the schedule you're following now. You will
6 adopt the EPS in May, on May 2nd, where you have a
7 scheduled hearing. And then you won't enforce it
8 until two months later.

9 So automatically your interpretation, we
10 say, must be incorrect. And therefore we're
11 looking for a different interpretation.

12 We proposed two that would actually fit
13 within the timeline. The second interpretation
14 that I would like counsel to look at was where you
15 have enforcement and establishment at the same
16 time. And yet it is done before June 30th. In
17 other words, it's effective on the date of the
18 actual adoption of the EPS at your hearing, which
19 would be on or before June 30th.

20 This would allow -- and we presented a
21 schedule in our brief with five workshops
22 separated by a month. This would not discriminate
23 against any party. Every stakeholder in this
24 room, including the Commission itself, would be
25 able to fully vet these issues. And you would

1 still meet the June 30th deadline, and we would
2 get a meaningful opportunity to participate. So
3 that's our position here. Not to torpedo
4 anything, but to make sure all folks have the
5 opportunity to truly make a good rule here.

6 MS. DeCARLO: And I did pursue that line
7 of thought with OAL on the off-chance that it
8 might be an avenue that we could pursue. However,
9 OAL's response was that in order for the regs to
10 be effective and enforceable by June 30th we would
11 need to get them to OAL 30 working days beforehand
12 if that's the best that we could do.

13 MR. McLAUGHLIN: Isn't there an option
14 for you to request that the regulation be
15 effective on the day it's filed?

16 MS. DeCARLO: Yes.

17 MR. McLAUGHLIN: Are you planning to do
18 that?

19 MS. DeCARLO: Yes, definitely. So June
20 30th would be when OAL approved the regulations
21 and filed with Secretary of State at the same --

22 MR. McLAUGHLIN: And yet that's when it
23 becomes effective, but it's not when it's
24 established. According to the NOPA that you will
25 file 45 days before the hearing, one of the

1 requirements of the NOPA is that you actually tell
2 the public the time and the place of your adoption
3 hearing.

4 So, in other words, that is when this
5 EPS will be actually adopted, established, the
6 same word I'm trying to make -- and so again,
7 that's going to be on May 2nd, according to the
8 current schedule. And I don't quite understand
9 how that is immediately.

10 So, in other words, if we're using that
11 one word immediately, and that definition of
12 established, how can we then go back to the other
13 clear unambiguous sections in the statute that
14 require you to follow the APA, that require you to
15 file a NOPA, and require you to provide meaningful
16 opportunity for participation by our parties. I
17 don't understand that.

18 And, again, we are just trying to find
19 an opportunity for everyone in this room.

20 PRESIDING MEMBER BYRON: Well, certainly
21 on behalf of this Commissioner we appreciate your
22 efforts to find us more time in the statute as we
23 understand it. I don't think we're going to make
24 a decision on this at this time.

25 In fact, I always turn to the attorney

1 that's on the Commission, and that would be
2 Commissioner Geesman. Would you like to add
3 anything, Commissioner, at this point?

4 (Laughter.)

5 PRESIDING MEMBER BYRON: If I may, Gary,
6 are we going to talk about schedule and additional
7 workshops at any time during today?

8 MR. COLLORD: That's the last item on
9 the agenda, just a brief mention of the January
10 11th and potentially 18th workshops. And also
11 what we hope to accomplish by the January 11th
12 workshop.

13 PRESIDING MEMBER BYRON: Right.

14 MR. COLLORD: And that is, you know,
15 drafting the draft regulations.

16 PRESIDING MEMBER BYRON: Correct. It is
17 a very tight schedule as we've currently got it
18 drafted, and there is provision for two additional
19 workshops. But I think, barring any further
20 discussion on this, we're going to go ahead to our
21 roundtable discussion.

22 MR. McLAUGHLIN: Will the Electricity
23 Committee be considering our brief, or is this the
24 response?

25 PRESIDING MEMBER BYRON: No, we will

1 certainly consider it.

2 MR. McLAUGHLIN: Thank you.

3 MR. COLLORD: Okay, so if we want to
4 return to the chapter five and six issues and
5 questions that we've outlined, and this summary of
6 issues and questions from the issue ID paper.

7 And, again, question 5.1, -- by the way,
8 before we start I want to encourage everyone in
9 the audience that's interested in participating in
10 this kind of roundtable discussion and helping us
11 walk through these questions and see if we can't
12 reach some resolution or decision, you know, to
13 come to the table. There's a limited number of
14 seats, but there are still a few available. And
15 we can certainly bring more chairs up if need be.

16 Question 5.1, are there additional
17 attributes of a compliance mechanism that should
18 be considered. And those are, in addition to the
19 two that were kind of outlined in the issue
20 identification paper.

21 MS. CHANG: Gary, this is Audrey, if I
22 could jump in. As we said in our comments, we do
23 believe one other goal that should be delineated
24 is paying attention to the administrative
25 simplicities from the point of view of the CEC, as

1 well.

2 There are concerns from our point of
3 view of after-the-fact monitoring even if there is
4 self-certification by the POUs, there's the issue
5 of just monitoring clients in that sense.

6 MR. COLLORD: Okay.

7 MS. LUCKHARDT: I think from the
8 perspective of POUs, one of the most important
9 factors, and it's a factor that you have down
10 there, but I just want to stress the importance,
11 is transparency and --

12 PRESIDING MEMBER BYRON: Excuse me, if I
13 may interrupt. Please introduce yourself, because
14 we haven't heard from you yet this morning.

15 MS. LUCKHARDT: Oh, sorry about that.
16 This is Jane Luckhardt from Downey Brand. I'm
17 representing SMUD today, and also presenting on
18 behalf of CMUA.

19 PRESIDING MEMBER BYRON: Thank you, Ms.
20 Luckhardt, go ahead.

21 MS. LUCKHARDT: So as I was saying, I
22 think one of the most important aspects and
23 attributes that you listed was transparency and
24 certainty. And we'd really like to stress that
25 because I think, as governing boards, and as the

1 governing board member spoke today, having a
2 standard that they can clearly determine whether
3 they're compliant or noncompliant is going to be
4 very important.

5 So I just want to really stress that
6 having a clear, simple-to-understand, and check
7 compliance with standard is very very important.

8 Another aspect that I think should be
9 added to your list of attributes to consider is to
10 minimize contracting burden. When you're looking
11 at a contract situation there are time constraints
12 and opportunities that present themselves. And we
13 want to make sure that the standards and
14 compliance mechanisms don't add an additional
15 contracting burden that then results in additional
16 costs for that contract, which then flow into
17 additional costs for ratepayers.

18 MR. COLLORD: Okay. Any other comments?

19 Dave, I think I'll ask you to kind of
20 help us walk through these issues, since you're
21 probably more familiar with them than I.

22 MR. VIDAVER: Okay. Dave Vidaver,
23 Energy Commission Staff. Thank you.

24 Jane, if I can get a point of
25 clarification. When you say contracting burden

1 are you more worried about delays that may result
2 in a rather fleeting opportunity being
3 unavailable, or are you worried about the need to
4 put, as a clause in the contract, some allocation
5 of the risk to the seller that might make it more
6 expensive for ratepayers?

7 MR. HOWARD: This is Randy Howard,
8 LADWP. I'm going to go for that one just because
9 I have a little bit more experience directly on
10 the contracts.

11 But before I do that I really want to
12 thank the staff over here and the number of
13 meetings we have had and the ability to really
14 discuss a number of the issues; just try to raise
15 them up and see how we might approach them. And a
16 lot of that did come out in some of the questions.
17 So I did appreciate all the time that we've had
18 and the access we've had to date.

19 But when it comes to the contracting,
20 one of the challenges in a utility like LADWP, our
21 approval process is about a 90- to 120-day process
22 already. So that's -- we have a minimum, a board-
23 level review; it's a public meeting; it's a
24 televised meeting.

25 The packages are published a minimum of

1 a week before, available to the public on the
2 website. We tend to have media at pretty much
3 every one of our meetings. And then if they do
4 approve it -- and our threshold is much different
5 than SMUD's in the sense that our threshold is
6 \$150,000. If it's greater than \$150,000
7 transaction our board must approve it.

8 If it's longer than three years it goes
9 on to city council. And the city council process,
10 as well, is a lengthy process. There's a chief
11 administrative officer report that's issued. It's
12 a public report where they look over the value of
13 that agreement, the details of that agreement;
14 provide recommendation on to the city council and
15 the mayor in that process.

16 So our concern would be is if we have to
17 add additional time to it, the burdens related to
18 that, especially to those that are submitting
19 those proposals to us when it comes to some of
20 these renewables, some of these entities really
21 don't have that holding power. They're trying to
22 make commitments on, say it's wind turbines;
23 they're trying to make commitments there. Or some
24 of the other types of facilities that we're
25 engaged with. Adding additional time to that

1 process becomes quite complicated and burdensome
2 for those parties.

3 The other challenge for us would be
4 related to the Wall Street-type folks. And I
5 think Commissioner Geesman pointed out correctly
6 is as they look at liability and the potential
7 that an agreement would not be approved, you know,
8 at what point do they make commitments for
9 financial investments that might need to be made.

10 MR. HAHN: Again, Jeffrey Hahn from
11 Covanta Energy. I was just wondering on this
12 issue is this certifying or self-certifying the
13 greenhouse gas emission performance standard, is
14 that what we're talking about? If, in fact, the
15 entity that's selling the power does, in fact,
16 meet your standard?

17 Because if that's the case the gentleman
18 from the Air Resources Board, I mean should
19 actually have a system and certification in place
20 soon that will take over from the Registry's
21 certification process. That's the numerator. The
22 denominator is the CEC form 1304 of the net
23 megawatt hours sold. And you'll have your
24 equation there and it'll be certified initially by
25 the Registry in their certification process.

1 But second, you'll have the local
2 districts or their surrogate, who's going to do
3 the certification for CARB, at least as it was
4 mentioned last week at the meeting on Friday, that
5 that's what CARB's looking at is a process for the
6 local air district.

7 So you'll have at least the numerator
8 certified; and then your own data from the CEC for
9 the denominator. And then you can see whether
10 they're over .5 or not.

11 MR. VIDAVER: Well, in the instance
12 where a contract points at a specific physical
13 resource there are probably less -- fewer
14 compliance problems.

15 The problem becomes more severe when a
16 contract doesn't point at a specific resource.

17 MR. HAHN: Maybe they ought to be
18 separated then for the ones that will be in
19 compliance with AB-32 under CARB; make it easier
20 for the people that have the data and have to
21 report under that law as satisfactory for this
22 law.

23 MR. VIDAVER: I believe SB-1368 charges
24 us with establishing an interim performance
25 standard; it's to be in place at least until AB-

1 32, a cap and trade program under AB-32 --

2 MR. HAHN: Then use the California
3 Climate Action Registry and their data, plus your
4 1304.

5 MR. VIDAVER: If I can point at a
6 specific resource, that's an option. But if I
7 can't, determining compliance becomes perhaps a
8 greater problem depending on the mechanism that
9 you choose.

10 MR. SHULOCK: This is Chuck Shulock from
11 the Air Resources Board. The data flow into our
12 reporting system would not have contract-specific
13 information. I don't think there's enough
14 granularity in what we would be getting to meet
15 the needs here unless I'm misunderstanding
16 something.

17 MR. HAHN: I'll give you an example.
18 Any one of our nine facilities would be in the
19 program with certified greenhouse gas emissions,
20 CO2 and the other five, and the CO2 equivalent.
21 That, along with your form CEC-1304, would give
22 you the megawatt hours that we sell. And so you'd
23 be able to calculate; those are the numbers I gave
24 for our facilities.

25 So you really would have that initially.

1 And then, you know, as CARB comes up with their
2 program of mandatory reporting and the certifying
3 by the local air districts, or whoever they get to
4 help them, then you'll have that, as well.

5 Just a point trying to help you out for
6 the specific sources that do have their data.

7 MR. VIDAVER: Thank you. Anything else,
8 Randy?

9 MR. SHETLER: I wonder if I might add
10 something. Jim Shetler with the Sacramento
11 Municipal Utility District. Responding to your
12 question number one I'd like to echo what Randy
13 said.

14 I think our main concern is adding
15 burden to getting the process through. It is time
16 consuming, as it is. From our perspective we
17 would fully anticipate putting a requirement into
18 our solicitations in our contracts to address this
19 issue. So that's not the burden issue, it's the
20 timing and the delays and potentially losing an
21 opportunity.

22 MR. VIDAVER: Thank you. The
23 implication of Mr. Howard -- one of the possible
24 implications of Mr. Howard's statement is that if
25 POUs have an approval process that takes 90 to 120

1 days to complete, that if there was an approval
2 process in place at the Commission that started
3 soon enough and finished soon enough, it wouldn't
4 be on the critical path, as it were, and it
5 wouldn't create a problem if it started soon
6 enough and finished soon enough.

7 MR. HOWARD: Correct, assuming yours is
8 just an up-and-down process versus any other type
9 of process. The challenge should be is if you
10 start all over based on some finding that would
11 ask you to go back, maybe potentially renegotiate,
12 and then start that approval process all over
13 again. But if it was just an up/down, I agree
14 with you.

15 MR. VIDAVER: One more question. The --
16 how do I put this -- I'm sorry, I'm losing my
17 train of thought -- assuming that you have a
18 contract that may or may not, or any commitment
19 that may or may not meet the standard, do you go
20 to your local regulatory authority, whether it be
21 the governing board or the city council. I assume
22 that if self-certification is required, that the
23 governing authority is going to have questions
24 about -- it's going to basically require you to
25 verify that the commitment is compliant.

1 We, given the complexity of contracts,
2 it's very unrealistic for a set of regulations to
3 provide you a definitive answer in all cases.

4 What would you propose be done in those
5 circumstances? Would you just take a blind guess
6 and admit that to your governing board? Or might
7 not the governing board say, we need some kind of
8 preapproval on this?

9 MR. HOWARD: I can go over the process
10 for LADWP. Obviously there's -- we're not going
11 to blindly guess on anything, I mean, related to a
12 regulation.

13 Our board, on any agreement that they
14 take up, makes a CEQA finding in itself. And they
15 formally make us go through those processes and
16 validate that this will be in compliance. I don't
17 think there's any question. Our city attorney
18 reviews every agreement. It goes to our governing
19 body; they review it for legality. And so those
20 are processes that we thereby have to demonstrate,
21 that these are compliant for whatever the set of
22 regulations are related.

23 I don't see where we would take anything
24 to them that was outside, or we would have to be
25 very clear in that process.

1 MR. VIDAVER: Might there not, in
2 certain instances, be benefits from having the
3 commitment approved? Or might not your governing
4 authority --

5 MR. HOWARD: I think if we were
6 discussing something that's questionable,
7 borderline. I know there's some questions here on
8 R&D type activities where we might, as management,
9 bring to our board some options that we might look
10 at. Maybe it's a different way of sequestration,
11 or a method of sequestration as an option to meet
12 obligations. Some new technology that we want to
13 try out on an existing facility or experimental.

14 I don't think that would fall under
15 capacity factor requirements or the five-year-plus
16 requirements, but it could. And therefore, I
17 would say at that stage, yes, we probably would
18 want to raise that issue to our board that this
19 was potentially noncompliant, or it wasn't clear.
20 And therefore would probably want to bring that
21 forward for review, a prior review, maybe, to the
22 CEC.

23 But it's hard right now sitting here,
24 thinking of some type of issue that that would
25 come up. Or circumstance.

1 MR. VIDAVER: Thank you. I think I'll
2 turn to Audrey and ask her, sort of turn it
3 around. One might argue that the difference
4 between, for certain resources the difference
5 between self-certification and prior approval is
6 just a matter of whether or not, for example,
7 materials presented to the governing board are
8 transmitted to the CEC; or whether the CEC attends
9 the board meeting or secures a copy of the
10 documents that have been presented to the
11 governing board.

12 Are there circumstances under which
13 prior approval and self-certification are
14 virtually the same thing? That there's not enough
15 of a difference to warrant a more formal prior
16 approval?

17 MS. CHANG: I mean I'm definitely open
18 to discussing this more off, but from what I can
19 think of right now, no. I can think of ways,
20 though, definitely to streamline the process that
21 will give the POU's the certainty that they do
22 need, you know, to definitely just get the yes/no,
23 up or down, you know, approval. And it wouldn't
24 hold up their contracting processes right away.

25 So there's one proposal that your staff

1 paper has suggested as, you know, list of approved
2 and not-approved facilities. That would
3 definitely very much so, I think, you know, speed
4 that process along.

5 ASSOCIATE MEMBER GEESMAN: How would
6 that work on a west-wide basis?

7 MS. CHANG: Definitely, I think there
8 would have to be time spent to creating that
9 database, those lists. I mean I'd leave it up to
10 the CEC. I know that the staff has got a little
11 bit more through that. I mean, but we would be
12 open to discussing that. I think it would
13 constantly have to be updated and added to, which
14 obviously would create some ongoing staff time, as
15 well.

16 PRESIDING MEMBER BYRON: Excuse me, to
17 the POUs, if I may, in addition to the
18 representations that Commissioner Geesman brought
19 up earlier, that you're required to make with the
20 penalty of the threat of jail time, are there
21 other self-certification aspects that POUs
22 currently do with regard to any other laws that
23 the state's imposed?

24 MR. HOWARD: There are quite a number
25 actually where we have a self-certification

1 responsibility. And we have significant penalties
2 for noncompliance.

3 And some of the ones that we're
4 currently working through are FERC-related for
5 reliability purposes. So, a number of us are
6 members of WECC and we are working through that
7 process where the reliability rules are coming
8 into play. And there are penalties associated
9 with noncompliance for reliability purposes.

10 There are numerous environmental
11 regulations, as well, where penalties will be
12 imposed, including potentially criminal actions,
13 if you are found in noncompliance.

14 MR. SHETLER: I guess I would also add
15 there are existing state requirements out there
16 for RPS standards that we have to self-certify on.
17 The other issue we deal with, besides the
18 environmental one, the WECC regulatory ones. Also
19 we are dealing with the public goods charge and
20 certifying that we're spending the amount of money
21 that we're supposed to be spending relative to the
22 public goods, and how that's distributed.

23 There are new requirements coming
24 forward on a recent legislation with energy
25 efficiency requirements that we will be required

1 to deal with.

2 All of that would be self-certified
3 activities that we have to do; and assure that are
4 being conducted in accordance with state law.

5 PRESIDING MEMBER BYRON: Ms. Chang or
6 any others that would care to answer. Do we know
7 of any difficulties with the POU compliance with
8 some of these other self-certification issues?

9 MS. CHANG: I think one of the primary
10 concerns in the past, which has, I think, been
11 closer to being, you know, rectified because of
12 recent legislation, but the issue is transparency
13 of that information. So I think some new
14 efficiency legislation that POUs reporting
15 requirements will help with that.

16 MS. GRIFFIN: I do have another
17 transparency question. This is Karen Griffin. In
18 trying to think through what a prior approval
19 would mean in terms of the transparency issue, and
20 looking to the PUC example as a model, there they
21 have to have an application, you know, a
22 compliance application through the advice letter
23 process or through the application process as a
24 resolution, and it goes to a formal business
25 meeting. So that there is a period for public

1 comment and there's a period -- and the actual
2 decision is made by the Commission.

3 So when you were thinking about adequate
4 transparency for the public were you thinking that
5 those two steps would be needed? A formal staff
6 report, and an approval by the Commission for
7 either each of these contracts, or for the more
8 controversial contracts? I'm not trying to pin
9 you into something, but -- what is sort of the
10 goal, or what would satisfy you, the constituency
11 you're representing, or the thoughts you're
12 representing here about this transparency issue.

13 MS. CHANG: I understand, you know, the
14 processes are different between the PUC and the
15 options that are available to the CEC. I don't, I
16 mean I'll -- definitely open to discussion on
17 this, but I could see possibilities for other ways
18 of public disclosure that didn't require a full
19 Commission meeting for approval.

20 I mean there could be public postings of
21 information online. I'm just throwing out ideas
22 right now, but how --

23 (Parties speaking simultaneously.)

24 MS. GRIFFIN: -- executive office --

25 MS. CHANG: -- haven't thought --

1 MS. GRIFFIN: -- director approving --

2 Again, I'm just throwing out ideas,
3 trying to see what is the goal we're trying to
4 achieve here. And how can we best do it. Okay?

5 MS. CHANG: Yeah, I mean so
6 opportunities just for transparency for option for
7 the public to see the information and also comment
8 on it, as well.

9 MS. FITCH: Can I just chime in for a
10 second. This is Julie Fitch from the PUC. I just
11 wanted to comment on the question of the
12 difference between the processes of the two
13 Commissions.

14 We are actually considering a self-
15 certification process for the direct access
16 providers and the CCAs. The process that Karen
17 described of, you know, of full Commission
18 application and vote is what we would typically do
19 for the investor-owned utilities. But we are
20 considering a different process for the other
21 entities that are not investor-owned utilities
22 that come under our emissions performance
23 standard.

24 So it doesn't get to the transparency
25 issue but --

1 MS. CHANG: We definitely do support,
2 you know, working and developing a different
3 process that is amenable to the POUs different --
4 the circumstances and I don't see it as
5 necessarily being identical to the procurement
6 approval process of the PUC.

7 PRESIDING MEMBER BYRON: Ms. Turnbull.

8 MS. TURNBULL: Okay. I'm Jane Turnbull
9 from the League of Women Voters. I can't resist
10 when the topic of transparency comes up, because
11 this is a very important topic to the League.

12 Public information is something that we
13 would like to see come out of this. The public is
14 really interested in the whole greenhouse gas
15 emissions issue. It turned out to be the primary
16 consideration of a major survey done by the League
17 last year. This is what they want to see happen
18 in terms of energy resource provisions across the
19 state.

20 So my suggestion is that if there's some
21 means of getting bill inserts out there on a
22 regular basis, which, you know, indicate what the
23 local providers are doing, and how they are doing
24 it. Put in simple language that is understandable
25 to the average consumer out there. I think it

1 would be an enormous benefit.

2 MS. GRIFFIN: Jane, I have a question as
3 to sort of which public are we thinking about here
4 in terms of this transparency issue. Is it really
5 more the public of the POU, itself, that we want
6 to be most engaged or needs to be most engaged?
7 Or is it the wider statewide constituency that we
8 represent?

9 MS. TURNBULL: I think it's both and.
10 But it is certainly the first, as well. Because
11 those are the people that are going to be
12 implementing demand response programs and energy
13 efficiency programs, as well as perhaps putting
14 solar on their roof or looking at DG applications
15 and that sort of thing.

16 MS. CHANG: If I may chime in. Audrey
17 Chang, NRDC. I do think that both are necessary,
18 both levels of public transparency. Because it is
19 true, as well, that any commitments that are made
20 by any LSE in the state also impacts the broader
21 community, as well.

22 MR. McLAUGHLIN: Bruce McLaughlin, CMUA.
23 Our point is that we already have a local
24 regulatory authority that has the full Sunshine
25 Act. We've got the Brown Act that requires

1 posting of agendas; city councils sometimes having
2 more stringent rules as far as providing
3 information to the public.

4 Also we have the Public Records Act,
5 where just about anybody can get anything they
6 want out of us with a simple request.

7 So we would suggest that we have full
8 accountability to the people we serve at the local
9 level.

10 MR. HOWARD: Randy Howard, LADWP. I
11 think one thing that would be simple for us is
12 upon approval of our process, certainly providing
13 documentation or posting with the CEC, is a very
14 reasonable approach, that these actions were
15 taken, or an action is even pending. I mean I
16 have no problem, you know, supplying a document to
17 the CEC for your posting that, you know, we're
18 taking up an action within our own process. I
19 mean that's not a difficult thing for us when
20 we're ready to go to our board.

21 If you wanted to set up a location on
22 your website or something, I have no problem with
23 that type of posting, to let anybody and
24 everybody, if they're not going to my website to
25 find out, you know, what we're doing and they're

1 going to yours, if you would consider something as
2 that for the public domain.

3 The other thing is the majority of the
4 publicly owned utilities that I'm aware of are
5 currently engaged with the Climate Action
6 Registry. I mean most of us are posting all of
7 our emissions.

8 LADWP, I think we've been doing it a
9 little over five years now on certification. I
10 think the longest of any utility in the state.
11 And that is very publicly accessible. You can see
12 what we're doing.

13 I do like Jane's comments. I think we
14 will probably take it up in L.A. We do the power
15 content labels now; we're doing the efficiency
16 activities in a bill insert. Why not add the
17 emissions. I think we'll just take that up.
18 Thank you.

19 MS. GRIFFIN: I've heard a couple of
20 ideas that are just -- I just want to put them
21 together as a thought piece, and this is just made
22 up right here.

23 This talks about taking Randy's idea of
24 a pre -- there are a couple of things that are
25 possible. Approval of an overall process that

1 might be the regulation specified what would need
2 to be in a self-certification activity in terms of
3 notice, transparency, whatnot.

4 Then there would be a prenotification
5 process, kind of a checklist that says yes, we've
6 looked at this, yes, we know it qualifies, or
7 whatever it is. A one-pager or something that we
8 could post, as well.

9 There would be perhaps a case-by-case
10 because it is unclear; you know, you can't tell
11 from the regulations which we're having to throw
12 together so quickly. Something that could come to
13 the Commission for approval. And that then there
14 would be an annual report, a self-certification in
15 more detail of things that have been approved by
16 your board, so that the board has done what
17 Commissioner Geesman was indicating was essential,
18 was an acceptance of the liability of the
19 financial risk that was associated with these
20 projects.

21 These are just ideas I heard this
22 morning. Do they actually fit together in a
23 package?

24 MR. SHETLER: Let me take a first shot
25 at that. I think Randy would be willing to yield

1 to me on that. This is Jim Shetler.

2 Certainly I think from our perspective,
3 number one, a very clear articulation of what the
4 standard is is something we've said before we need
5 to have.

6 And in listening to the presentation
7 before and reading some of the language, on a
8 facility-by-facility basis I don't think that's a
9 large problem, to identify whether you have or
10 have not met the standard. It gets more
11 problematic when you start talking system, system
12 purchases and system back sales. And I understand
13 that. So, number one, we want a clear
14 articulation.

15 Number two, as a public agency and
16 dealing with what we deal with day-in and day-out,
17 we take risks and we ask our board to endorse what
18 we're doing. And insure that we have mitigated
19 those risks and have identified where the problems
20 are.

21 So, certainly our board certifying what
22 they're doing is something we do every day and
23 we're prepared to do that. I think the idea of
24 tying our website, or allowing a posting that can
25 be used by the CEC to notify a broader audience

1 other than just our individual customer owners on
2 what actions we're taking makes sense, sounds
3 reasonable. I think SMUD would be open to that.

4 Certainly we're prepared to supply the
5 Commission with a summary either on an annual
6 basis, or on a case-by-case basis of those
7 contracts or actions we've taken that are subject
8 to SB-1368. Whether it's an annual report or on a
9 case-by-case, we're find with that.

10 One issue you raised which is there may
11 be issues where we want to come and get approval.
12 I hesitate on that. Certainly we are in a lot of
13 regulated environments and we go to those
14 regulators periodically to discuss an issue,
15 whether there may or may not be a compliance
16 necessary or a problem. We're certainly
17 comfortable with that. But that's not normally in
18 the format of an approval by that agency. So I
19 guess I'd want to think about that one a little
20 bit.

21 MS. CHANG: Audrey Chang, NRDC. I do
22 agree that it will be very helpful to set clear
23 guidance on what the standard means. And also set
24 an overall process for compliance and get that
25 settled upfront.

1 I am still very concerned about the
2 after-the-fact reporting. From that, even -- it's
3 just very unclear to me that even after a
4 commitment is made, either a power plant is built,
5 or a contract is signed, that that could -- if it
6 was found after the fact to not comply with the
7 standard for whatever reason that it's very hard
8 to undo that commitment.

9 ASSOCIATE MEMBER GEESMAN: But wouldn't
10 your organization or someone of the tens of
11 thousands of plaintiffs' lawyers in California be
12 able to sue them for substantial financial
13 liability?

14 MS. CHANG: I don't think that we
15 necessarily want to go in that route. I don't
16 think we want to rely on that as a primary method
17 of enforcement.

18 ASSOCIATE MEMBER GEESMAN: You do it
19 once you probably never have to do it again. I'm
20 just trying to be practical here. And it takes us
21 weeks and weeks and weeks to certify facilities
22 that are eligible for the renewable portfolio
23 standard, a relatively straightforward test.

24 MS. CHANG: Well, I think if there was,
25 say, the list of approved facilities, in that case

1 I think everybody agrees it's a pretty simple
2 process. And assuming that you can keep the
3 date -- sorry, keep the list updated --

4 ASSOCIATE MEMBER GEESMAN: Yeah, but
5 that's like assuming pigs --

6 MS. CHANG: -- and up to date.

7 ASSOCIATE MEMBER GEESMAN: -- can fly.
8 I mean, you can't --

9 MS. CHANG: Well, that -- so, I mean
10 there's issues that we see, too, with that
11 approach. But, I mean, we're willing to discuss
12 different options.

13 As far as Karen's proposal, maybe if you
14 could clarify what you mean by a one-page
15 prenotification? That's one question. And then
16 secondly, it's unclear to me how you would
17 delineate or provide specific guidance on those
18 cases that are, as you say, unclear.

19 MS. GRIFFIN: I'm making this up as I'm
20 going along. But I heard an improvement on my
21 idea from other there which would be a link to our
22 website to the utilities' website in terms of all
23 of the documentation that was being supplied, the
24 public documentation being supplied could also be
25 accessed from our website.

1 What I was thinking of in terms of my
2 one-pager was yes, we, the staff, have looked at
3 this. We believe -- we have determined that it
4 is, we are telling our board that it is compliant
5 because if. And there would be a couple of things
6 you would check. It's an existing combined cycle.
7 Or it's something that has an exemption in the
8 statute, some of the biomass stuff, that kind of
9 thing.

10 Or we -- and I don't know what else goes
11 on that page, but it would be the five or six
12 reasons that we think it passes. And that we're
13 sending it to our board on such-and-such a date.
14 That's what I --

15 MS. CHANG: And do you envision that
16 there could be action by the CEC on that document?

17 MS. GRIFFIN: Yeah. If we looked at it
18 and said, eeyewh, we don't think it passes. I
19 think we would -- I don't know what you could do
20 yet. We haven't gotten to that part of the
21 discussion yet. And so I think that's a part of
22 the discussion we absolutely have to have of let's
23 jus posit that there's a preapproval process. How
24 does it work, you know, how long does it take,
25 what kind of information has to flow. So we

1 should have that on the table today to know what
2 the cost and benefits of that choice path are.

3 MS. DeCARLO: It would be useful to me,
4 at least, I know staff might already have an idea
5 of what we're talking about here, but to find out
6 how many of these contracts are we talking about
7 on a yearly basis. How many contracts do the
8 various POUs anticipate entering into that are
9 five years or longer; or how many of these
10 ownership investments you anticipate.

11 MR. HOWARD: Randy Howard, LADWP. First
12 I'm going to try to pin down when we say
13 contracts. One of our significant issues, and I
14 think an issue we've raised with the staff was we
15 believe this only applies to procurement
16 contracts. It doesn't apply to operating
17 contracts, fuel contracts.

18 There are many many many contracts
19 associated with the operation of a large utility,
20 or a small utility, even. And some of them are
21 more than five, some are less than five.

22 So, if we're talking procurement of
23 energy contracts --

24 MS. GRIFFIN: I think we have to hold
25 that till the chapter 2 discussion.

1 MR. HOWARD: Okay. That's where I'm --
2 okay, but I'm going to try to respond to the
3 question with the assumption that that's what
4 we're discussing.

5 In LADWP's case, for five years or
6 greater, normally it would not have been a huge
7 number for contracting, because, one, it's our
8 goal as a vertically integrated utility and our
9 desire to own and operate the majority of our
10 facilities. And so we do that and it takes quite
11 a long time to construct a new facility.

12 But, more recently in the renewables,
13 there are a number of us here aggressively
14 proceeding with renewables and the addition of
15 these renewables. So, I am bringing forth a
16 contract probably one a month, or one every two
17 months, for a number of years, because these
18 facilities need to get built and online by 2010.

19 So I have quite a large number of complicated
20 agreements that will be coming forward.

21 The other thing I'd like to point out is
22 on some of these when we talk facilities and we
23 talk issues, AB-32 is really the portfolio
24 approach. And we're going to be there very soon.
25 We're not going to make -- when we talk about new

1 facilities versus existing facilities, and the
2 investments made, and I know we're going to talk
3 about that a little further, but 32 as the
4 portfolio, I mean we are all on track to move
5 aggressively towards the reduction of emissions.

6 So, we're not going to enter into
7 agreements, too, that are going to somehow raise
8 our emission levels to something that we have a
9 better option to have as part of our system.

10 PRESIDING MEMBER BYRON: Would SMUD or
11 someone representing the smaller munis also like
12 to answer that question?

13 MR. SHETLER: And the question being the
14 number of contracts --

15 PRESIDING MEMBER BYRON: Yes.

16 MR. SHETLER: -- we might see in the
17 year.

18 PRESIDING MEMBER BYRON: And then we're
19 going to go ahead and take a break, so go ahead
20 and answer.

21 MR. SHETLER: So I should answer this
22 long and drawn out --

23 PRESIDING MEMBER BYRON: Take the short
24 answer.

25 MR. SHETLER: Okay, I got it, I

1 understand. Jim Shetler with SMUD.

2 I think it'll vary by utility to utility
3 and year to year. As Randy mentioned, we're all
4 approaching RPS standards, so that's going to
5 increase the amount of contracts we're probably
6 going after.

7 But on a typical year for SMUD three to
8 five contracts a year. It'll probably be more
9 than that with the RPS we're going after; and how
10 that will be impacted by 1368 will depend on
11 facility by facility.

12 ASSOCIATE MEMBER GEESMAN: What about
13 swap agreements?

14 MR. SHETLER: Well, usually we do a few
15 of those, not a lot beyond five years.

16 PRESIDING MEMBER BYRON: Can CMUA answer
17 for some of its smaller members?

18 MR. JORDAN: No, but SCPPA can.

19 PRESIDING MEMBER BYRON: Thank you.

20 MR. JORDAN: Yeah, and NCPA --

21 MR. POPE: SCPPA and NCPA together will
22 take that question.

23 PRESIDING MEMBER BYRON: Please
24 introduce yourself.

25 MR. POPE: My name is Jim Pope; I'm the

1 General Manager of the Northern California Power
2 Agency. What we do for our members is operate and
3 maintain power plants, geothermal power plants,
4 hydro power plants and a few gas turbines.

5 But we also enter into contracts. And
6 unfortunately the longer term contracts we've
7 entered into over the last several years, the
8 counter-parties have not been very creditworthy
9 and so we've had some trouble with having them be
10 sustainable longer than five years, even though
11 the contracts were longer than five years.

12 So, long-term contracts are problematic
13 for us going forward. And we don't enter into a
14 lot of long-term contracts for our members. But
15 we do enter into contracts on more of a laddered
16 portfolio basis. And when there is an opportunity
17 in the marketplace to go longer, we will do that.
18 Right now it doesn't seem to be there in the
19 current market.

20 So we don't have, for our members, a lot
21 of long-term contracts unless we're dealing with
22 wind or renewables where we're going out in the
23 longer, 10, 20 year basis, going forward. That's
24 pretty much where we are in northern California.

25 PRESIDING MEMBER BYRON: Thank you,

1 Mr. Pope.

2 MR. CARNAHAN: Thank you. I'm Bill
3 Carnahan, the Executive Director for the Southern
4 California Public Power Authority. We have 12
5 publicly owned utility members in southern
6 California as members of SCPA; we're a joint
7 action agency similar to NCPA.

8 Likewise, we don't do a lot of long-term
9 contracts on behalf of the members. They do most
10 of those on their own. But I would guess that on
11 an average there's probably five or six a year
12 which would total 70 or 80 maybe, among all the
13 members.

14 We are very involved in project
15 construction, as Commissioner Geesman knows. We
16 built the Magnolia Power Project in Burbank that
17 went commercial about a year ago.

18 And we are very involved with all of our
19 members in renewable procurement. Currently we're
20 out seeking about 800 megawatts of renewables with
21 a preference to own those facilities.

22 So those would certainly be long-term
23 ownership commitments. Some of those are by long-
24 term contracts. So we generally interface with
25 them on those kinds of projects rather than power

1 purchase contracts.

2 But I would guess collectively we're
3 probably talking 50 or 60 among all the members.

4 PRESIDING MEMBER BYRON: Thank you, Mr.
5 Carnahan.

6 MR. HOWARD: If I can add to that, I
7 happen to be the Chair for SCPPA's renewable
8 development activities.

9 We are -- currently we have about 18
10 proposals, different vendors we're negotiating.
11 One of the challenges that would be for the CEC is
12 while we negotiate the terms and conditions
13 jointly with the other SCPPA participants and the
14 counter-parties, in the end we usually sign our
15 own agreements.

16 So you might have three or four, five
17 utilities sign separate agreements with the
18 counter-party utilizing similar terms.

19 So you could add the numbers up greatly
20 as to the number of agreements that you would see.

21 PRESIDING MEMBER BYRON: Okay. With
22 that, let's go ahead and take a lunch break.
23 Thank you very much for being here.

24 Let's reconvene at 1:15 and we'll pick
25 up where we've left off in our list of questions.

1 1:15, thank you.

2 (Whereupon, at 12:07 p.m., the workshop
3 was adjourned, to reconvene at 1:15
4 p.m., this same day.)

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1 AFTERNOON SESSION

2 1:18 p.m.

3 PRESIDING MEMBER BYRON: Just so we all
4 recall where we are, we're working our way through
5 the roundtable discussion on the compliance and
6 enforcement approaches. And the staff is pretty
7 much using the cheat-sheet, if you will, with
8 regard to questions that they're looking for
9 responses for.

10 And we're going to try and press forward
11 on that and keep going at deliberate speed, if at
12 all possible. But at the same time, stop us at
13 anytime if you've got a question or comment that
14 you want to go back to.

15 Gary, I'll be glad to help, but you go
16 ahead and take us through this the way you'd like
17 to.

18 MR. COLLORD: Okay, and I was thinking
19 that since we're still, in a way, still on the
20 first question of 20 or more questions --

21 PRESIDING MEMBER BYRON: Oh, no, I was
22 down to about 5.5 by now.

23 (Laughter.)

24 MR. COLLORD: But it seems to me that,
25 you know, the most meaty and important issue here

1 is, you know, the option of compliance through
2 either a prior review approach of contracts, or
3 compliance monitoring, self-certification. And a
4 lot of the discussion has sort of been, you know,
5 skating around that issue.

6 But maybe we should approach this from
7 the standpoint of if we're going to pursue either
8 approach, what factors would the stakeholders want
9 to see, in either a prior approval approach or a
10 post-certification approach.

11 And so I was going to suggest maybe we
12 can just start with the assumption that if it were
13 to be a self-certification approach, what do the
14 stakeholders think would be important requirements
15 to have in that approach.

16 MS. LUCKHARDT: Now, when you're
17 saying -- I'm just trying to get a feel for what
18 you're looking for from us, because I'm not quite
19 sure where you're going with this. Are you
20 looking at, you know, self-certification involves
21 sending the board documents to the Energy
22 Commission, you know, at the same time they're
23 made public. I mean are you looking for that type
24 of procedural detail? Or what are you looking for
25 here?

1 MR. COLLORD: Yeah, I guess in my mind
2 when I think of self-certification or annual
3 compliance monitoring I envision perhaps the
4 Energy Commission providing the POUs with a
5 reporting form at the end of the year. And you
6 provide us, you know, documentation of the kinds
7 of contracts you entered and the particulars that
8 are asked for in the report.

9 And then perhaps there would also be
10 some independent verification of that information
11 that's returned to the department, perhaps
12 certified by your independent auditors. And so we
13 probably also have to develop some audit
14 guidelines to add to the scope of their audit
15 process.

16 Bruce also, at one of our workshops, had
17 sort of laid out a schematic approach for how this
18 might work. And so I'm thinking in terms of, you
19 know, the process, as well as the kind of
20 documentation that would be needed and provide
21 adequate security and confidence that what we're
22 receiving is accurate and could be used for
23 enforcement purposes, as well.

24 MR. CARNAHAN: Could I just ask a
25 question in terms of what you -- when you talk

1 about the audit, instructions to the auditors. If
2 what we're dealing with here planned emissions and
3 energy-generated, the audits tend to deal with
4 financial issues. And why would they be impacted
5 at all?

6 MR. COLLORD: Right, but under this
7 process, again, the Energy Commission might
8 approach this from the standpoint of providing the
9 POUs with a reporting form to fill out
10 periodically at the end of the year.

11 And it would, you know, ask for details
12 on the kinds of contracts that were entered, and
13 the necessary information we would need to
14 determine whether, you know, your contracts are
15 compliant.

16 And so that would be something, you
17 know, the director, or the board of the POU would
18 certify. But also, as sort of an additional check
19 or level of certainty, also have your independent
20 auditors look at that document, the annual
21 compliance form; certify that yes, the information
22 is correct; and sign off on that, as well. And
23 also submit the audit to us for review, as well as
24 the reporting form.

25 MR. CARNAHAN: I think virtually all of

1 the SCPPA members are in the Climate Registry, and
2 that information is submitted. And it's the kind
3 of information I think you would need to make that
4 determination. Is that sufficient, so we don't
5 have to gin up a whole different set of
6 information?

7 MR. COLLORD: It could be, but I think
8 it's for you to decide and provide.

9 MR. HOWARD: Randy Howard, LADWP. One
10 of the things that, and I don't know that all of
11 the smaller munis are engaged, but I know at least
12 the larger ones are part of the IEPR. Are
13 currently providing annually these documents, a
14 lot of detail on our resource mix. And the way
15 we're using those resources. Those typically do
16 go through our internal auditing group prior to
17 the formal submittal. And the signature where we
18 sign for those documents.

19 I could envision a process by where we
20 would include any new additions or contracts
21 associated that we had taken action on in that
22 previous annual period. And I think we could
23 also, L.A., on Monday, did submit the last five
24 years of certified Climate Action Registry
25 reports. I mean we could make all those available

1 on an annualized basis. We can provide that.

2 And I think there you can kind of match
3 up the emissions based on the resources in the
4 contracts that we do enter into. Might be viable.
5 Because we're already doing that once a year.
6 We're fulfilling those obligations on your forms.

7 MR. POPE: I may have missed what you
8 were saying, but I mean I think we've said earlier
9 that if there are clear and transparent rules and
10 standards set, and if our governing board has all
11 the obligations of following the law, and it's
12 transparent, that when we make a decision it's
13 available to you to look at according to the clear
14 and transparent rules and standards that are
15 developed. That that seems to be meeting the
16 requirement.

17 Going into any second review and an
18 audit and having to do an annual review and an
19 audit, I think that's more than really needs to
20 take place here.

21 If the rules and the guideline and the
22 standards are clear and concise, we'll meet them.
23 And we're going to send it to you. And you're
24 going to be able to see it if we don't.

25 We do a power plant, we have all the

1 financial and legal obligations. I mean, I just
2 went through our financial audit and they gave me
3 a series of questions about fraud. And I
4 characterized them as they're "have you stopped
5 beating you wife" type of questions. Do you know
6 of any fraud, and all that kind of stuff, going
7 on.

8 So all that kind of stuff is taken care
9 of in the normal process of running the agency,
10 being upfront, or running a utility. So I think
11 all those checks and balances are there. We need
12 to give you what we did and comply with what the
13 clear standards are. And I think that's what --
14 we've met the intent of the law.

15 MR. VIDAVER: There are financial
16 commitments for which clarity of the regulations
17 is, sufficient clarity of the regulations may not
18 be possible. We tend to speak of new power plants
19 or specific physical resources, perhaps contracted
20 for. But there are contractual arrangements that
21 don't point at specific resources. So the
22 regulations don't always provide sufficient
23 direction.

24 So one might contend that you either --
25 the board, the POU goes forward and enters into

1 the arrangement. And either has sought the
2 advice, approval, whatever you want, of the
3 Commission to verify that the contract is indeed
4 compliant.

5 Or has certified of its own accord that
6 it does. In the latter case the problem might
7 arise that the Commission might not have viewed
8 that as compliant. So if POUs are reticent to
9 come to us for approval, or advice, then there
10 needs to be -- there arguably needs to be some
11 mechanism afterwards. There needs to be some
12 review after the fact, arguably.

13 Not -- it's an audit, perhaps only
14 simply to make sure that the intent of the
15 legislation is being met, the regulation suffice
16 to insure that the intent of the regulation is
17 met. Not necessarily to seek out opportunities to
18 level fire and brimstone.

19 The flip side of this is, of course, if
20 your board is risk-averse and is concerned about
21 obeying the law, as I'm sure it is, want some kind
22 of verification that, well, you say you think it
23 meets the -- the contract meets SB-1368. What if
24 your board wants that in writing from the
25 Commission?

1 And the related question is what kind of
2 process do you see in place that both gets you the
3 certainty that you need in a timely fashion, and
4 gets the stakeholders' certainty that the
5 contract, indeed, in a transparent fashion, is
6 determined to meet the standard.

7 MR. POPE: It seems like I'm asking,
8 we're trying to answer a hypothetical question.
9 The fact that we've done it according to the law
10 and we commit that we're following the law, and we
11 send it to you in accordance with the law, it's
12 transparent. And if there's a problem with it, we
13 would hope that somebody would either bring it up
14 early before we dealt with it, or early after we
15 dealt with it and we could deal with it.

16 But, we're not -- I'm confused --

17 MR. HOWARD: Yeah, one of my concerns in
18 LA's case where we might be out in the market a
19 bit, would be that I'm not going to enter in with
20 a counter-party unless they attest and certify
21 that it's compliant. I mean that's going to be
22 part of my contract. I'm going to put the burden
23 on them.

24 I can't monitor their daily actions to
25 me; I can't monitor what they're going to sell me.

1 I can only believe what I've agreed to, but
2 they're going to have to -- that's going to be
3 part of the agreement. I mean, I don't want to
4 hold my board responsible if they didn't do what
5 they agreed to do in the contract. They're going
6 to be liable, not my board.

7 So, we will probably want to audit them.
8 But remember, we're talking about -- if we're
9 talking about a purchase, a renewal of a purchase,
10 you're with another counter-party. I don't
11 control, I don't operate their facilities. I
12 don't operate where their power's coming from.

13 So, they're going to have to certify to
14 me that it meets all these obligations.

15 MR. VIDAVER: I take that to mean that
16 in those cases where exactly what compliance
17 entails is uncertain, you would be prone to leave
18 it to the counter-party to the contract to answer
19 that question?

20 MR. HOWARD: No, I will require
21 attestation of some fact that it is compliant.
22 And they will have to -- just like renewables
23 today, they have to attest to me that it's
24 renewable.

25 I mean I'm not at that windfarm every

1 day. So they have to attest to me and certify
2 that it truly is compliant. And that's the way I
3 would envision this would work. Because I don't
4 have control.

5 MR. POPE: And I agree with that. If
6 you're going to put the requirement of meeting the
7 requirements on the counter-party, so there are
8 clear requirements, policy standards, whatever
9 word they're going to wind up being called, we
10 will take that and make the counter-party
11 responsible for that.

12 MR. VIDAVER: In my example they're not
13 that clear.

14 MR. POPE: What's not clear?

15 MR. VIDAVER: What you just said. If
16 they're clear. I think you were alluding to the
17 regulations.

18 MR. POPE: Correct.

19 MR. VIDAVER: If the regulations make
20 clear what is and is not compliant there's no
21 problem. You just toss that into a contract and
22 allocate that risk to the counter-party.

23 MR. CARNAHAN: Well, if they aren't
24 clear how are you going to determine whether it
25 complies or not?

1 MR. VIDAVER: I'm looking for input --

2 MR. CARNAHAN: And if we clear that up,
3 put it in the regs, we'll do it.

4 MR. VIDAVER: Okay, I'm looking for
5 input --

6 ASSOCIATE MEMBER GEESMAN: Let me make a
7 suggestion. Why don't we strive to make them
8 clear. Why don't we have you guys attest that
9 you've complied. And we'll come up with a page or
10 two of the most Draconian language your lawyers
11 have ever seen --

12 (Laughter.)

13 ASSOCIATE MEMBER GEESMAN: We're going
14 to hang it around your necks because you're the
15 ones that we regulate. If there's not compliance
16 we're coming after you. You can go after your
17 counter-party if you choose to, but you're the
18 guys that have attested to us. And we're going to
19 have our own police force of auditors, if we
20 choose to pay for them, to go out and determine if
21 the certifications you made to us last year were
22 accurate or not.

23 Isn't that the way you have a strict
24 enforcement, total compliance approach to this
25 subject area?

1 And if you're talking about coming in
2 trying to see if our staff feels that you sort of
3 conform, but we'll really have to take it up to
4 the full Commission to really get definitive,
5 you're going to be months and months and months
6 before you ever get an approval, if you do that.

7 What's wrong with this picture? I've
8 read the staff report. I've read all the written
9 comments. I realize there are a lot of
10 complexities here. But shouldn't we be striving
11 for bright-line requirements?

12 MR. CARNAHAN: We would certainly
13 encourage that, yes.

14 MR. POPE: Yes, we should.

15 MR. KELLY: Steven Kelly with --

16 PRESIDING MEMBER BYRON: Yeah, please go
17 ahead and introduce yourself.

18 MR. KELLY: Steven Kelly with the
19 Independent Energy Producers Association. And I
20 would just like to respond to that dialogue from
21 the counter-party perspective.

22 I think most counter-parties, at the
23 time they execute the agreement, would be happy to
24 attest that their facility at that time meets this
25 clear standard.

1 Whether they would be able to attest to
2 that on the ongoing operation for a 10- or 15-year
3 contract is another matter. You might not find
4 that. Particularly in contracts in California
5 today where the ISO has operational control over a
6 lot of the facilities in real-time dispatch.

7 So, as you think through the compliance
8 mechanism, recognize that there is this problem
9 about people being attest to the operations of the
10 facility on an ongoing basis. Particularly when
11 they don't control that operations. And that
12 could gum up the contract. So, just as an FYI.

13 MS. CHANG: Audrey Chang, NRDC. Mr.
14 Kelly made a very good point there, and I do want
15 to respond. In our view the standard is not
16 intended at all to be an ongoing monitoring,
17 ongoing operation standard. It is an upfront,
18 one-time approval. Or it's any load-serving
19 entity in the state shall not enter into any long-
20 term financial commitment into baseload
21 generation.

22 And so we -- I mean, I agree that you
23 can definitely get the contracting party to attest
24 to that information. That's why I also think that
25 will be a -- it's a relatively, for some cases, a

1 very relatively simple process of getting those
2 numbers.

3 In our view we do think that CEC
4 oversight is still necessary. But, I just wanted
5 to address that. I don't think, in our view,
6 either, it's not supposed to be a ongoing
7 performance standard.

8 MR. POPE: Thank you. We were going to
9 make that point, but Devra did a great job.

10 MS. CHANG: Audrey.

11 MR. POPE: -- Audrey did a great job.

12 MS. DeCARLO: Do we need to discuss
13 what, if we did go with the self-certification
14 approach, what documents would need to be
15 provided? Or was it a simple, just one-page, we
16 certify that we comply with the statute and your
17 regulations? Or should there be backup material
18 associated with that self-certification so that
19 there could be some sort of verification or not?

20 Is that something the Committee wants to
21 go into?

22 PRESIDING MEMBER BYRON: Fine, let's put
23 the question, though, to the public utilities.
24 What kind of documentation would you foresee with
25 regard to the self-certification process?

1 MS. LUCKHARDT: You know, I think there
2 are a variety of different things that you could
3 use. If it's an actual facility you might have
4 permitting documents that could back up some of
5 the material, or an attestation. It just -- I've
6 totally lost track of the question.

7 But it seemed like you were asking two
8 different things, or Lisa was making two different
9 points. One was kind of, okay, do you want a form
10 that says we attest that this contract, or this
11 facility that we're building, at this point is
12 acceptable. And then if you wanted to verify
13 that, what type of documentation you would have
14 behind that.

15 And, you know, a lot of that depends on,
16 to a certain extent, what you guys would like to
17 see. You know, I think that if you attach a board
18 -- the board findings, the governing board
19 findings to the back of the certification, that
20 would go through and explain or attest that the
21 contract or the facility meets SB-1368, or your
22 specific requirements. That might be sufficient
23 for an initial filing.

24 If you had a question or something like
25 that, there is a variety of information that I

1 think a POU could provide.

2 So to a certain extent I think we'd be
3 looking for guidance from you on how much
4 information you would like to see initially. But
5 I would think that a signed attestation may be
6 backed with board documents might, from an initial
7 standpoint, be sufficient for facilities that are
8 pretty clear. You know, whether it's something --
9 a facility located in California or, you know,
10 unit-specific contract or something like that.

11 MR. McLAUGHLIN: Bruce McLaughlin, CMUA.
12 I just want to clarify the question. Are we
13 talking about the annual compliance filing? Or
14 are we talking about something that would be --

15 MS. DeCARLO: Yeah, how would we
16 approach this. Would it be an annual base -- just
17 your thoughts on how this whole process would
18 work, I guess.

19 MR. SHETLER: Jim Shetler with SMUD.
20 Let me back up a little further. I'm assuming
21 what we're talking about is for this year what
22 contracts have we entered into. Not an annual
23 attestation of every contract that we have
24 currently signed.

25 So, what new contracts or new facilities

1 have we entered into in the last 12 months?

2 MS. DeCARLO: Right.

3 MR. SHETLER: Okay. With that as the
4 basis then I would say that from our perspective
5 what we would be looking at is probably the board
6 resolution with whatever attestation were
7 associated with that for that specific contract or
8 facility.

9 If it's a facility where we have data
10 that shows that the manufacturer will certify
11 whatever, that we would probably include that, as
12 well.

13 When you start talking about, and this
14 is one that I think gets into the "what if it's
15 not as clear area", and that is if you're into a
16 system purchase where you've gone in and let's say
17 we've gone to Bonneville Power Administration and
18 we've entered into a system purchase agreement
19 with them.

20 Now, for them, it's primarily large
21 hydro. But there's also other facilities out
22 there that you go from. The question is how do
23 you treat that. And I think that's one we need to
24 come to grips with somewhere along the way.

25 I think from my perspective, what I

1 would suggest is there's probably a way of
2 figuring out what Bonneville's system average
3 emissions are. And that would probably be a way
4 of dealing with that in determining what that
5 impact is to our purchases.

6 That's one way of dealing with it. At
7 least from SMUD's perspective that's how I would
8 look at it as a way of dealing with it.

9 I guess I'd also just say that I would
10 expect that would be signed on an annual basis by
11 an officer in the district, which most likely
12 would be myself.

13 MR. CARNAHAN: And I think also as a
14 part of the approval process with the local
15 governing boards and the city councils, is there's
16 usually a staff report that contains all the
17 background and backup information that they need
18 to make that determination before they take the
19 action.

20 And at least in the case of most all the
21 SCPA members I know of, those are posted on the
22 internet before the meeting so the public has an
23 opportunity to see those. And those would be very
24 easy to provide. And that sets the stage for the
25 basis upon which they did the resolution and the

1 attestation they would make later.

2 MR. COLLORD: Okay, anything else to add
3 on this issue? If not, maybe we could move on to
4 chapter 6, which deals with -- which is also part
5 of this section, enforcement options, and maybe
6 think in terms of again if we had a self-
7 certification approach, how would enforcement
8 proceed? You know, what are the options that
9 would work, that the parties would be subject to.

10 MR. POPE: I think we've talked this
11 morning before lunch if it's a project and such
12 that it's pretty clear to understand that you've
13 got to go through a process such as you're going
14 to make the appropriate documents for the
15 financing of it that will give you all the
16 assurances that it's met the standard. And all
17 the commitments that you have to make. So, that
18 would be the basis of enforcement.

19 The risk that someone entering into a
20 power plant construction and ownership is the risk
21 of the debt you have to pay; the energy you're
22 expecting from the power plant. And if it was not
23 in compliance and there was an injunction or a
24 legal challenge to it, you may have to shut the
25 plant down. Not only would you not be paying for

1 your investment, you would have to be then
2 replacing that energy with something else.

3 So, the -- I don't know if you want to
4 call it the risk, but the driver for you to do it
5 right, or the requirement for you to do it right
6 is the incredibly onerous consequences if you
7 don't.

8 And so I don't think in the financing
9 power plant venue that you're going to mess up.
10 Because you're going to put a whole lot of dollars
11 at risk.

12 Now, on the contractual arrangement it's
13 somewhat similar. It is if you go into a
14 relationship with a counter-party and you are
15 expecting that energy to be delivered in
16 accordance with the requirements and the clear
17 transparent rules and standards that have been set
18 up under this, and it is not you then, if you were
19 doing it with some quote "shady" counter-party
20 that might not be following that, the risk you're
21 taking is if they get an injunction or a court
22 case that says they're not in compliance, and they
23 don't deliver. You're taking the risk of having
24 to replace that energy in the market on a short-
25 term market basis.

1 You're taking the short-term versus the
2 long-term cost. You're taking a financial risk in
3 dealing with counter-parties who may not be in
4 compliance.

5 So, I really think just the financial
6 risks around contracts, and clearly the financial
7 risks around investments, are very very onerous;
8 and you're going to have to follow those going
9 forward.

10 And those risks are taken on by the
11 customers in the municipal utilities directly.

12 ASSOCIATE MEMBER GEESMAN: I have a
13 question for the lawyers in the room, and it
14 doesn't necessarily need to be addressed today.
15 Your written comments would be fine.

16 And that is do we have it within our
17 authority at the Energy Commission to make a
18 noncompliant contract ultra vires, meaning that it
19 would not be enforceable as a contract because it
20 is contrary to public policy.

21 I think that would expose a noncompliant
22 party to contractual liability to its counter-
23 party.

24 MR. HOWARD: Randy Howard. Yeah, as I
25 stated, once the regulation's in place we will put

1 it within our contracts. If the counter-party is
2 not compliant, it's a breach of the contract.

3 So I think we're in agreement there,
4 that we would accept it as a breach of the
5 contract and they would have to accept that
6 liability.

7 MR. McLAUGHLIN: I'm not going to answer
8 the question but I want to clarify the question.
9 You're asking whether you, as an agency, can then
10 cause us to unwind our contract?

11 ASSOCIATE MEMBER GEESMAN: Yeah, by
12 force of our regulation.

13 MR. McLAUGHLIN: Right. Okay, thank
14 you.

15 MR. POPE: I think we'll answer it in
16 written form. But I would -- the way Randy
17 portrayed it, I think that's correct.

18 MR. COLLORD: Okay, well, seems like we
19 probably should move along, then, to the emissions
20 performance standard.

21 ASSOCIATE MEMBER GEESMAN: Gary, I had a
22 couple of questions, and I guess they may come
23 under either five or six. One had to do with the
24 so-called de minimis exception. In the written
25 material there seemed to be a conflict of

1 viewpoints.

2 And I'm, I guess, most focused on NRDC's
3 comments which suggested that -- and I'm quoting,
4 "SB-1368's direction that any baseload generation
5 supplied under the long-term financial commitment
6 must comply with the EPS supports the argument for
7 not having a size threshold at all." And then
8 they go on to say, "or at least having a very
9 small truly de minimis sized threshold."

10 Now, is it the party's belief that we do
11 have the ability, as I certainly think
12 practicality would suggest we should, to create a
13 de minimis exemption?

14 MS. CHANG: No, I think from our
15 perspective SB-1368 is very clear that should
16 apply to any baseload generation that is supplied.

17 ASSOCIATE MEMBER GEESMAN: One megawatt?

18 MS. CHANG: Well, so there are, I
19 acknowledge, you know, practicality concerns, as
20 you said. So which is why we have suggested, as
21 we have also in the PUC proceeding, very small
22 sized thresholds of 5 megawatts, but not as large
23 as 25.

24 ASSOCIATE MEMBER GEESMAN: Now, I think
25 that the PUC does have a certain amount of

1 preemptory regulatory authority over the IOUs; and
2 presumably there are other regulatees.

3 And I guess I understand that the 5
4 megawatt SGIP number at the Energy Commission,
5 where we have a different set of responsibilities,
6 and arguably less preemptory authority, we
7 typically have not imposed our full strength
8 reporting requirements on projects below ten
9 megawatts.

10 Is that the same type of de minimis, in
11 your judgment that five megawatts at the PUC is?

12 MS. CHANG: I think we'd have to think
13 about that. I mean, just the 5 megawatts in our
14 mind seemed to be a good threshold because of the
15 self-generation incentive program.

16 ASSOCIATE MEMBER GEESMAN: Yeah, which
17 has not bearing --

18 MS. CHANG: So that just seemed to --

19 ASSOCIATE MEMBER GEESMAN: -- on us.

20 MS. CHANG: Yeah. So, possibly, I
21 mean, --

22 ASSOCIATE MEMBER GEESMAN: My point here
23 is we have finite resources. My hunch is that
24 your organization would probably find a better use
25 of our resources to be outlawing the incandescent

1 light bulb rather than having an army of green-
2 eyeshade-ribbon clerks looking over pieces of
3 paper. Most of which they probably won't
4 understand.

5 So, I want to focus on what actually is
6 material in terms of emissions.

7 MS. CHANG: Well, first, I -- from our
8 perspective, I mean it seems what you're saying is
9 that you're seeing this as a very complex, you
10 know, yes-or-no determination. And I think it --
11 I mean the documentation as supplied, it's a very,
12 in our mind I mean, a relatively very simple
13 comparison. Does it meet the standard or not. Is
14 it above the line or below the line.

15 So, I just wanted to say that.

16 ASSOCIATE MEMBER GEESMAN: I'm just
17 trying to touch the bottom of the swimming pool
18 with my toe, and figure out if it's --

19 MS. CHANG: Yeah, well, with that I
20 think it's --

21 ASSOCIATE MEMBER GEESMAN: -- 5
22 megawatts or 10 megawatts or 25 megawatts or --

23 MS. CHANG: And with that, I mean I do
24 also want to clarify that we do believe it should
25 apply to the facility, and not the contract side.

1 I think that's very important.

2 That was an issue that had come up as
3 different views came up at the PUC. But I think
4 with the statute, it definitely -- the standards
5 should apply to underlying facilities.

6 ASSOCIATE MEMBER GEESMAN: So, does that
7 mean that a contract --

8 MS. CHANG: So, if there is a size
9 threshold it should be applied to the underlying
10 facility, the size of the underlying facility and
11 not the size of the contract.

12 ASSOCIATE MEMBER GEESMAN: So, if Randy
13 has a 50 megawatt contract made up of contract, or
14 facilities, all of 1 megawatt size, you'd look the
15 other way on that?

16 MS. CHANG: We just -- I mean, from the
17 practicality standpoint, which is why we suggested
18 a small, a very small size threshold. So I think,
19 I agree that the 1 megawatt size is probably
20 getting a little bit into, you know, the little
21 units.

22 ASSOCIATE MEMBER GEESMAN: And then have
23 we moved away from system power as a subject? Or
24 are we going to come back to it?

25 MS. GRIFFIN: We're not there yet.

1 PRESIDING MEMBER BYRON: No, we have
2 not.

3 ASSOCIATE MEMBER GEESMAN: Okay.

4 MR. HOWARD: I don't think we've touched
5 that. But I would like to add something to the
6 discussion on the size of the issue. And this
7 just might have to be a cleanup language dealt
8 with, because it's apparent SB-1368 didn't address
9 the distributed generation cogen issue.

10 We've had a lot of discussion with
11 staff. We don't think it's the intent of the
12 state to really eliminate that. In LA's case we
13 have over 30 contracts with our customers. They
14 supply about 5 percent of the power within the
15 city from these cogen distributed generation
16 facilities.

17 Some are relatively small, you know, 50
18 kilowatts, 100 kilowatts, you know, up to much
19 larger at the refineries. But UCLA's cogen
20 facility, and -- we don't think it should apply to
21 those facilities. We think they're existing. We
22 don't think it should apply to existing.

23 But we don't want SB-1368 to take away
24 from some of the distributed generation and some
25 of the innovation that's been going on there. We

1 think that was never the intent, and it just might
2 have to come through cleanup language.

3 ASSOCIATE MEMBER GEESMAN: Yeah, and I
4 guess on that point, that's a really good
5 suggestion that we talked to the staff about
6 yesterday.

7 Not to lay an extra workload on anybody,
8 but at the end of this process we ought to have a
9 list of suggested cleanup legislation that the
10 Energy Commission could sponsor. Because I think
11 we're likely to turn up areas that the literal
12 wording of 1368 and the regs runs contrary to the
13 energy policy that the Energy Commission and the
14 CPUC have attempted to promulgate.

15 PRESIDING MEMBER BYRON: Mr. Howard, you
16 brought up the cogeneration. May I just ask, can
17 you indicate whether or not those contracts are
18 typically five years in length or shorter? Or
19 longer?

20 MR. HOWARD: For a number of them every
21 three years we do an interconnection agreement
22 which just allows for the netting for those times
23 when they generate a little bit more or a little
24 bit less. And we have a mechanism by which they
25 can provide back to our system, or receive from

1 our system.

2 But for some of the larger ones or some
3 of the newer ones, the counter-parties are the
4 customers, have sought out ten years or greater
5 typically for their investment scenario, to insure
6 that they have the interconnection. And the rules
7 and boundaries of which we'll take power from them
8 when they have access.

9 So we do have both cases, but we do have
10 above five years.

11 MR. POPE: These are good things located
12 close to the load and all that kind of stuff. And
13 size really does matter here on the economics.
14 And you want to stimulate that, so you want to
15 have the size and the economics come together.

16 And I support what John is saying about
17 maybe finding some way to make this perfectly
18 clear by a cleanup language that would try to get
19 around this.

20 Because all of us want as much
21 generation as close to load as we can get it.
22 Because it's just good for lots of reasons. And
23 we want it clean and close to the load.

24 So I think economics are going to drive
25 whether you're going to get it or not, going

1 forward. So I really think in some cases a little
2 larger and a little longer contract make that more
3 economic.

4 MR. HOWARD: Just as an example, and we
5 had discussed with your staff, was where we have a
6 oil pumper and one of the byproducts is this
7 excess gas; it's not pipeline quality, but there's
8 not enough of it to clean it up and put it in a
9 pipeline.

10 And so it might be a flare today; and
11 then they want to put in a couple microturbines
12 just to utilize that gas instead of flaring it,
13 which we think is a good thing.

14 But right now the statute, itself,
15 doesn't seem to allow that. And we don't think
16 that was the intent.

17 PRESIDING MEMBER BYRON: Okay, and would
18 you foresee that we could perhaps one way to
19 address that would be back to this megawatt
20 limitation? An exemption based on size.

21 MR. HOWARD: That's one way. But it
22 would probably, in my reading, might require a
23 cleanup language, a bill to be introduced.

24 PRESIDING MEMBER BYRON: Yeah. Ms.
25 Chang, just if I may follow up with some of

1 Commissioner Geesman's questions.

2 We're faced with a little bit different
3 situation here, publicly owned utilities. I think
4 we have upwards of 50 of them, not three or four,
5 as the PUC has to address with regard to IOUs.

6 And, of course, I understand your point
7 with regard to facility based. But still, the
8 number of contracts that we're talking about
9 reviewing here could be rather extensive.

10 MS. CHANG: Well, a quick comment on
11 that. I know a lot of the POUs, mentioned that a
12 lot of your contracts coming up are renewable
13 contracts. And we have proposed here in our
14 comments and also at the PUC a way of dealing with
15 that, in that renew -- all RPS eligible renewables
16 are deemed to be compliant with the standard and
17 automatically pass for that reason.

18 So there wouldn't, I mean those
19 contracts foreseeably wouldn't necessarily need to
20 come through the approval process.

21 PRESIDING MEMBER BYRON: Understood.
22 But I wasn't referring to renewable contracts.

23 MS. CHANG: Okay.

24 PRESIDING MEMBER BYRON: So back to this
25 threshold question, you know, you had made the

1 distinction between 25 megawatts being too much,
2 but 5 being more acceptable as a number linked to
3 the SGIP, which I agree has nothing to do with the
4 proceeding here.

5 Is there a basis in your mind for the
6 distinction between a 25 megawatt limitation or a
7 5 megawatt limitation otherwise?

8 MS. CHANG: I think it's linked just to
9 the fact that a 25 megawatt facility could still
10 produce significant amounts of greenhouse gas
11 emissions that would still create the financial
12 and reliability risk that SB-1368 is trying to
13 prevent -- or to protect the customers from.

14 And so I think it's the 5 megawatts, I
15 think we just saw, is really being truly just, you
16 know, just simplifying administration. And those
17 were just much smaller facilities that have less
18 greenhouse gas emissions.

19 PRESIDING MEMBER BYRON: Would you agree
20 that it would be more worthwhile that maybe that
21 limitation be based upon the effectiveness of, as
22 you put it, the greenhouse gas that we're going
23 after, the effectiveness of being able to get
24 compliance? In other words, if there's a very
25 large number of contracts to review at 5 megawatts

1 versus a much more smaller number of contracts,
2 the cost would be significantly less to review
3 those.

4 And if there's not much emissions that
5 are leaked as a result, I mean I'm trying to get
6 to is there any sense of cost effectiveness with
7 regard to that limitation?

8 MS. CHANG: Yes, I mean I can see your
9 point there, but I'm also still in the back of my
10 mind going back to SB-1368 and the direction there
11 that all baseload generation supply must meet the
12 standard. So that's what I keep going back to.

13 PRESIDING MEMBER BYRON: Yes, except for
14 perhaps a 5 megawatt limitation.

15 (Laughter.)

16 MS. CHANG: No, I mean I'm just saying,
17 if they're concerned, this is just because it was
18 brought up in the PUC proceeding. But we -- the
19 way that we read the language is that there should
20 not be a size threshold.

21 PRESIDING MEMBER BYRON: Okay. I think,
22 I feel like I've flogged that one enough.

23 (Laughter.)

24 PRESIDING MEMBER BYRON: Could we talk
25 about system power, John? You'd indicated you

1 wanted to talk about that. And I think that's
2 another main point. Is that all right, Gary, with
3 you? Are we pushing the --

4 MR. COLLORD: I think so, I --

5 PRESIDING MEMBER BYRON: Okay.

6 MR. COLLORD: -- think we're ready to
7 move into chapter 4 and the questions.

8 PRESIDING MEMBER BYRON: Well, not
9 quite. System power is listed as your section
10 question 5.16, I believe.

11 MR. COLLORD: Okay.

12 PRESIDING MEMBER BYRON: All right, so
13 Commissioner Geesman, would you like to start us
14 off there?

15 ASSOCIATE MEMBER GEESMAN: I don't have
16 a sense as to what the position of the parties are
17 with respect to system power contracts.

18 My instinct is to say that they play a
19 much more prominent role with respect to the
20 publicly owned utilities than they do with the
21 investor-owned utilities. And that the tendency
22 among all of the utilities within the ISO control
23 system has been, for reliability purposes, to get
24 pushed much more strongly by our resource adequacy
25 and local reliability concerns into unit specific

1 contracts.

2 I don't think that same trend has been
3 the case among the POU's. And as a consequence, I
4 think this is a larger problem for the Energy
5 Commission than perhaps it is for the Public
6 Utilities Commission.

7 Hi, Chris.

8 PRESIDING MEMBER BYRON: Please
9 introduce yourself.

10 MR. WARNER: I'm Chris Warner; I'm
11 actually representing an investor-owned utility
12 here, so I can't address the publicly owned
13 utilities issue on system power.

14 But I did want to mention a pragmatic
15 issue we've identified at the CPUC on system
16 power. And it's actually one where we think the
17 Energy Commission can play a very helpful
18 technical role.

19 And that is during our deliberations on
20 the system power and unspecified contracts issue
21 at the PUC, the parties there have struggled with
22 how to come up with an acceptable methodology to
23 attribute carbon content to the unspecified
24 contracts.

25 And we identified that actually you all

1 here at the Energy Commission in the power content
2 labeling area have developed some methodologies
3 and some expertise on that, although not
4 specifically for the purpose of the 1368 emissions
5 performance standard proceeding.

6 As we went through the PUC proceeding on
7 specified contracts, I think a lot of us, as
8 parties, became increasingly frustrated that we
9 didn't really have a technical methodological
10 answer that we all could agree on.

11 I think we all agreed, as we and NRDC
12 expressed, we didn't want to create a loophole in
13 terms of unspecified contracts. But we also
14 didn't want to disincent system power purchases
15 where they might provide flexibility in the
16 future.

17 Now, PG&E doesn't have any significant
18 system power purchases, and, Commissioner Geesman,
19 you're right, this may be more of an issue for the
20 publicly owned utilities. But we also are looking
21 forward ten years or so and wanting to maintain
22 flexibility in the system.

23 So, as one of our final comments in the
24 PUC proceeding we basically said, look, the CEC
25 has some experts who have worked on methodology

1 here. Why don't we convene another workshop, try
2 to get together and all, as parties, develop a
3 methodology that would allow all of us to agree on
4 a consensus approach on the attributes of system
5 power.

6 Now, that doesn't get directly at your
7 issue of how big a problem it is. But what we're
8 trying to do is jump over to what's the solution.
9 And right now we don't see a methodology that's on
10 the table that's acceptable. Particularly for
11 PG&E where if we were to buy system power, if we
12 had system power we believe a lot of it would come
13 from the northwest where the attributes would be
14 different carbon content from system power
15 purchases from the southwest.

16 Different utilities have different
17 compositions of system power. And the CEC has
18 been grappling with that in the power content
19 area. And we actually think you all, your staff
20 would provide very helpful technical expertise in
21 that area.

22 And so, again, we would recommend that
23 perhaps the CPUC and the CEC get together; provide
24 a technical working group to try to resolve that
25 issue.

1 ASSOCIATE MEMBER GEESMAN: We had a
2 workshop I think it was last spring on --

3 MR. WARNER: Yes.

4 ASSOCIATE MEMBER GEESMAN: -- this topic
5 because our staff felt that the approach that
6 we've been taking for net system power, which has
7 provided a consistent way to compare the
8 California system from year to year for the last
9 five or six or seven years, our staff felt that
10 there were improvements that could be made that
11 would more accurately capture what the true makeup
12 of out-of-state imports were.

13 The workshop didn't go real well --

14 MR. WARNER: Right.

15 ASSOCIATE MEMBER GEESMAN: -- because as
16 with any proposed methodology, there are a lot of
17 loose threads that can be pulled on. And I
18 probably pulled on more than my share of them.

19 But in the course of doing so we talked
20 to some of the other states about their
21 perspective. And although my memory isn't clear
22 enough to be precise as to what the numbers were,
23 we spoke with one of our neighboring states to
24 whom we were assigning I think 20 percent of the
25 imports from this neighboring state we said were

1 coming from coal.

2 Well, the feedback from that state was,
3 no, they'd allocated 80 percent of our imports to
4 coal.

5 So, this is a question that isn't really
6 solely within the realm of California agencies to
7 address. And I think if it's going to be
8 successfully addressed, probably requires a fair
9 amount of coordination with the other members in
10 the WECC and other participants in our regional
11 market.

12 My apprehension, if we use a methodology
13 that anyone of the other states could characterize
14 as arbitrary or preferential to California, we're
15 opening ourselves up for a commerce clause
16 lawsuit, which I think we all want to avoid.

17 MR. WARNER: And I think, Commissioner,
18 I'll try not to get into the legal aspects of it,
19 but I think what we agree on completely is that
20 this is an issue that has some cross-cutting
21 effects, not only in terms of SB-1368 emissions
22 performance standard, but it's also going to come
23 up in the context of the counting issues with
24 regard to AB-32 and with imports and with system
25 power.

1 So, the sooner we all try to get some
2 consistency in the methodology here, the better
3 off we're going to be. And that's one area where,
4 again, the comment PG&E would make generally here
5 today, and it goes without saying, is that you all
6 and the CPUC really need to strive in this
7 rulemaking to achieve that consistency of a
8 statewide standard that applies equally and fairly
9 to everybody.

10 This is one of those aspects of
11 consistency that bears, I think, some really
12 collaborative technical work, not only in terms of
13 treating imports fairly and accurately, but also
14 in treating instate system power purchases
15 accurately.

16 And I think we and the POU's would
17 probably be, I think, on the same page there; that
18 we would want to make sure we all understood the
19 technical methodology and we all felt that it was
20 fair, that it was accurate and treated the
21 different sources of system power as accurately as
22 we can.

23 ASSOCIATE MEMBER GEESMAN: So, in
24 today's marketplace how many contracts for system
25 power in excess of five years are there?

1 MR. WARNER: Well, that's a good
2 question. We at PG&E don't have any current
3 intent for long-term system power contracts. And
4 I think you're right, we may not be in the same
5 boat as some of the other utilities.

6 But we also have a ten-year procurement
7 plan. And we want to maintain as much
8 flexibility, and we want to maintain the proper
9 balance of incentives and disincentives to move
10 toward our goals in terms of CO2 reduction.

11 So, it might seem odd for us to be
12 leading the charge for technical consistency here,
13 but we're trying to keep our eye on how the system
14 may work in the future. And this is one of the
15 areas where we think it's important to maintain
16 the flexibility.

17 And others may want to mention whether
18 they've got any current system power issues.

19 PRESIDING MEMBER BYRON: If but the IOUs
20 were entering into ten-year contracts.

21 MR. POPE: I was going to make that
22 point being a PG&E customer. I'd kind of like to
23 have you get some longer term contracts to reduce
24 my rates.

25 (Laughter.)

1 MR. WARNER: We all would like that.

2 PRESIDING MEMBER BYRON: Could we
3 hear from -- thank you, Mr. Warner. Could we hear
4 from other -- from the POUs on how this system
5 power issue is, the nature of its importance to
6 you.

7 MR. POPE: Right now system power
8 contracts longer than five years, I only have one
9 with Seattle City Light that goes out that long.
10 And it's an exchange arrangement.

11 And we factored into the power content
12 label for our members -- or the members that are
13 in that contract, within NCPA. So, I don't have -
14 - some of the members have some longer term
15 contracts like that, and they factor in what the
16 content label of those imports are.

17 But, across the members, I would say
18 less than five that I'm aware of are out there
19 past five years right now.

20 Like I said earlier, I had a couple
21 contracts with Calpine and Enron that were way out
22 there, but those aren't any more, we don't have
23 any of those anymore.

24 So, that's kind of where we are.

25 PRESIDING MEMBER BYRON: Can anyone else

1 add to that for the other POU's?

2 MR. HOWARD: From LA's perspective we do
3 not have any long-term system power contracts in
4 which we procure from the system, other than when
5 we're looking at the firming on those external
6 renewables that are coming in. And that's a whole
7 other issue here.

8 But there where they're firming up with
9 the system power before it hits our control area.
10 If it's a renewable within our control area, we're
11 firming that ourselves with our own regulation.
12 But outside of our control area they're being
13 firming by some level of system power.

14 And this is an important issue because
15 LA is a net seller. I mean, so I'm typically
16 selling and not really buying unless the economics
17 work out. And so this is a challenging one to
18 grapple with as to when we're making a sale, what
19 emissions were attributed to the sale.

20 Currently I only sell from my system; I
21 don't sell unit specific. So, when Edison is in
22 need or a neighboring utility, that's the kind of
23 transaction that I'm making as a system
24 transaction and not a unit specific.

25 Going forward they will all come from

1 IPP Coal, but that's just so you're aware.

2 (Laughter.)

3 (Parties speaking simultaneously.)

4 MR. SHETLER: Jim Shetler with SMUD.

5 From SMUD's perspective we have about three system
6 contracts right now that are greater than five
7 years.

8 We look at whatever system we're buying
9 from; we look at what their mix is to determine
10 how we would average that.

11 Randy brought up the issue of system
12 sales. We also do system sales. We don't really
13 sell from -- we have, in one or two cases, but
14 usually don't do unit contingent sale; we usually
15 do system sales. And, again, we would look at
16 what our average is to determine what the
17 emissions would be for that.

18 MR. SMITH: Richard Smith speaking for
19 Modesto Irrigation District. We're kind of in a
20 different position that we're a mid-size municipal
21 utility. We serve 700 megawatts of load. And 400
22 megawatts of that is local generation.

23 But we also own significant investment
24 in the COTP as part of TANC, 262 megawatts up to
25 the northwest. And so currently we actually have

1 six unspecified contracts that are longer than
2 five years. And we have three wind contracts that
3 are backed up with market power. So we have the
4 same issue that Randy does when it comes to market
5 contracts.

6 One of the things I think is unique to
7 mid-size and small utilities is that our need for
8 baseload power only grows by about 6 to 8
9 megawatts a year. And so first to invest in a
10 large combined cycle plant is a big deal. It
11 would have to be a joint project, which we've been
12 exploring for several years now, trying to work
13 with NCPA and some others on some joint projects.

14 But in the meantime before those type of
15 projects can go forward, we have two other
16 options. One is build kind of this medium-sized
17 intermediate load projects which you've MID come
18 to you in the past for, under small power plant
19 exemptions, which, you know, are going to meet the
20 same -- they're not going to be as clean as some
21 of these combined cycle, frame FA type plants.

22 But in the meantime we've got this need,
23 you know, we've got to fill this need for the
24 demand growth every year. And for us it really
25 takes away some diversity benefits if we don't

1 have these kinds of tools available to us.

2 We see there being some real reliability
3 issues, too, because of this regulation just
4 instantaneously this whole category of contracts
5 is eliminated.

6 So, for us, diversity; there probably
7 would be an increased in forced outage rates
8 because unit specific contracts have implied
9 reliability and availability numbers, whereas
10 market based, there's several units that can come
11 in and fill that power need. So there's not the
12 force majeure issues that there are with unit
13 contingent.

14 So, it's just, for us we'd want to make
15 sure, when you asked this question we didn't
16 intend to get up and speak, but it does matter.
17 It matters in terms of the size of the utility.
18 Maybe not so much whether it's IOU or POU, but the
19 size of the utility and how we do our resource
20 planning. And the tools that we have available
21 going forward. So.

22 ASSOCIATE MEMBER GEESMAN: So I wasn't
23 clear. What do you have beyond five years on
24 system contracts?

25 MR. SMITH: We have six contracts right

1 now currently beyond five years. And it equates
2 to about 200 megawatts, counting some of the wind
3 contracts, as well.

4 ASSOCIATE MEMBER GEESMAN: Thanks.

5 MR. POPE: The size that NCPA, most of
6 the facilities that we have are pooled where
7 members have percent ownerships in like the
8 geothermal and the hydro. So they function, the
9 small members, in the owned facilities tend to
10 function as one entity outside of NCPA. Inside of
11 NCPA they're broken out by percent ownership.

12 PRESIDING MEMBER BYRON: Thank you, Mr.
13 Pope. Please go ahead.

14 MR. CARNAHAN: I think in the case of
15 the southern cities, the medium to smaller
16 members, I believe most of those have covered
17 their baseload requirements in investments in
18 projects; and most of their system contracts are
19 below the 60 percent level. They're more peaking
20 and intermediate kinds of contracts.

21 There's a fairly large number of them,
22 but I don't know that there are all that many that
23 would fall under the legislation.

24 PRESIDING MEMBER BYRON: You know, I
25 always have trouble with arbitrary thresholds that

1 are established by policymakers and legislators
2 and such. I'm hoping maybe staff could help
3 answer my question. Where did this five-year
4 contract limitation come from in the language of
5 the legislation? Do we know?

6 If staff doesn't have any idea, perhaps
7 someone else does? The five-year limitation. Is
8 there a sense --

9 MR. POPE: I believe it started in the
10 legislature at three years and was moved up to
11 five years during the legislative debate. And I
12 think five years is very close to what the PUC
13 has.

14 MS. GRIFFIN: That was where it came
15 from, is that the PUC was using five years as
16 the -- it had just evolved there, as that was the
17 break for long-term contracts. And people said
18 let's just carry the concept forward since we've
19 already -- it's working. And parties were
20 comfortable with it.

21 So it was sort of a consensus.

22 PRESIDING MEMBER BYRON: Okay. Do you
23 want to add something? Thank you.

24 MR. COLLORD: Okay, well, before we move
25 on to chapter 4 and the series of questions and

1 issues associated with the emissions performance
2 standard, I wanted to point out that there are
3 more copies of this summary of chapter issues out
4 at the front table, in case anyone needs an extra
5 copy.

6 PRESIDING MEMBER BYRON: You know, Gary,
7 I'm going to interrupt you if I may for a moment.
8 Before we go to chapter 4, I want to make sure
9 that there's plenty of time for public comment on
10 other issues that we know may be contentious.

11 Blended contracts, would anyone wish to
12 speak --

13 MS. GRIFFIN: That's in chapter 4.

14 PRESIDING MEMBER BYRON: I'm looking
15 back at question 5.19 with regard to blended
16 contracts. And the question is, is self-
17 certification a suitable compliance mechanism for
18 all blended contracts.

19 So, maybe chapter 4 would be the better
20 place to do that. So we could defer that if
21 that's all right.

22 I just want to make sure before we
23 finish up on compliance and enforcement if there's
24 anyone else that wishes to provide some comments.
25 Of course, we can also -- we can go back and

1 address these topics later. But I just want to
2 make sure that all parties have a chance to be
3 heard from on these issues.

4 Ms. Turnbull.

5 MS. TURNBULL: Yes, Jane Turnbull,
6 League of Women Voters. I have a question, and it
7 just didn't dawn on me until this meeting today,
8 but I'm wondering what the implications are in
9 terms of greenhouse gas emissions coming from the
10 peaking power plants.

11 And, you know, what percentage is coming
12 from that group of plants that do have capacity
13 factors considerably less than 60 percent. And is
14 there something that we should be doing to address
15 those?

16 ASSOCIATE MEMBER GEESMAN: I think my
17 reaction is it's likely to be best addressed
18 downstream in the AB-32 planning process. The
19 statute has tended to rivet everybody's attention
20 on baseload and the 60 percent capacity factor.
21 But as the ARB assembles its AB-32 plan, and as
22 both the Energy Commission and the CPUC
23 participate in the development of that plan,
24 obviously the peaking units are going to need to
25 be addressed.

1 MS. TURNBULL: So, I mean this is a
2 pervasive, all-inclusive issue, --

3 ASSOCIATE MEMBER GEESMAN: Yeah.

4 MS. TURNBULL: -- and I think it needs
5 to be addressed from that perspective.

6 ASSOCIATE MEMBER GEESMAN: Well, and I
7 guess I would also say it's more than just the
8 peakers. Probably a much larger presence in the
9 emissions footprint are emissions coming from the
10 existing steam boilers that, on average, operate
11 20 or 21 percent of the time, and which this --

12 MS. TURNBULL: With horrendous heat
13 rates.

14 ASSOCIATE MEMBER GEESMAN: Which the
15 Energy Commission has been on record since 2005 of
16 the need to replace all of those plants by the
17 year 2012.

18 MS. TURNBULL: Um-hum.

19 ASSOCIATE MEMBER GEESMAN: And one of
20 our ongoing procurement dialogues with the CPUC
21 has been focused on trying to facilitate that.

22 MS. TURNBULL: And to pick up on
23 Audrey's point about individual de minimis sort of
24 plants, I think the League is very supportive of
25 combined heat and power, because we do see that as

1 a good use of a limited resource. And wouldn't
2 want to see that diminished in any sense because
3 of this rulemaking.

4 PRESIDING MEMBER BYRON: Thank you, Ms.
5 Turnbull.

6 Gary, I've interrupted you, go ahead.
7 Try and lead us through section four.

8 MR. LAYTON: Hello; my name's Matt
9 Layton with the Energy Commission. I prepared the
10 series of questions about the performance
11 standard. This will be much drier than the
12 previous discussions because it's pretty much cut-
13 and-dried, I believe.

14 First and foremost, does anybody have an
15 opinion what the standard should be? The PUC is
16 proposing 1100 pounds per megawatt hour. There
17 was a lot of discussion at the PUC about the
18 number. And I guess if anybody has comments about
19 where the number might want to be, relative to
20 their needs, or their system or their plants, we'd
21 love to hear it.

22 MS. CHANG: Audrey Chang, NRDC. First
23 and foremost I think it's most important for that
24 standard level to be consistent statewide. To
25 apply uniformly, both standard as implemented by

1 the PUC and also by the CEC.

2 We have submitted in our comments to the
3 PUC that we support an emissions level of 1000
4 pounds per megawatt hour based on the data that
5 was submitted in that proceeding, and also what we
6 saw as gaining support from most parties.

7 But in any case, in those discussions
8 there I think the majority opinion was that it
9 should either be set at 1000 or 1100, and not
10 above.

11 ASSOCIATE MEMBER GEESMAN: Yeah, I think
12 Audrey makes an extremely strong point. It's our
13 presumption that we have a consistent standard.
14 And we are collaborating with the PUC primarily on
15 a staff-to-staff basis, but also with some
16 Commissioner dialogue, as well.

17 But everybody here should have the
18 understanding that it's our intent to have a
19 consistent standard with the PUC.

20 MR. LAYTON: And this would be the
21 opportunity to, I guess if you felt the number
22 should be different than 1100, perhaps you should
23 talk to the PUC. Because -- I echo Commissioner
24 Geesman, that we're going to be consistent with
25 the PUC.

1 MR. SHETLER: Jim Shetler from SMUD. I
2 guess I would just echo that we think, number one,
3 it should be consistent. I don't think it makes
4 any sense to have different ones. And we're fine
5 with the 1100 number.

6 MR. HOWARD: LADWP, I think within our
7 preliminary comments that we provided, I think we
8 identified. Instate we have about 1800 megawatts
9 that wouldn't be compliant with the 1100 standard,
10 about 25 percent of our inbasin or our capacity.

11 Most of them don't operate at the 60
12 percent, though, and we're going through a number
13 of repowerings going forward.

14 So I think within our comment that we
15 believe maybe a phased-in approach was the best
16 approach, because our objective certainly is to
17 reduce the emissions. And we're going to have to
18 get to that place of repowering to the combined
19 cycle with the best available control technology.

20 But right now we have about 1800
21 megawatts within the state that would not comply
22 with that 1100 number.

23 MR. McLAUGHLIN: Bruce McLaughlin, CMUA.
24 A couple comments on that. First of all, of
25 course the word consistent is not necessarily

1 exactly the same. A definition of consistent
2 could be in harmony with and not in conflict to.
3 So being consistent with the CPUC, which has three
4 ultra-huge IOUs, there might be room for several
5 different standards, small, medium and large
6 should I say, perchance; operational reasons we're
7 talking about these cogens or some CHP or
8 something like that. And that might be another
9 way to permit us to meet our reliability,
10 operational limitations.

11 ASSOCIATE MEMBER GEESMAN: Let me ask on
12 that, if the Legislature really envisioned that
13 degree of custom tailoring, wouldn't they have
14 provided for it? I mean, there seems to be a
15 pretty strong theme throughout the bill of parity
16 of treatment.

17 Now, whether you agree whether that's
18 sensible or not, wouldn't the Legislature have
19 articulated a little more pluralistic theme if
20 they intended us to adopt that much custom
21 tailoring in our standard?

22 MR. McLAUGHLIN: Actually you just
23 opened the door to talk about the drafting of this
24 bill, which I won't go into, I guess. It was --

25 (Laughter.)

1 MR. McLAUGHLIN: It is fairly
2 inarticulate. But what I would answer is it does
3 not preclude it. And the language, since it does
4 not preclude it, it provides the opportunity. And
5 as we try to look at the entire statute in
6 context, we look at the reliability; we look about
7 all the other options in here that seem to be
8 precluded. How are we going to make it work?

9 PRESIDING MEMBER BYRON: Mr. Kelly, go
10 ahead.

11 MR. KELLY: Steve Kelly with the
12 Independent Energy Producers. I'll be consistent
13 on the consistency issue.

14 (Laughter.)

15 MR. KELLY: But on the issue about the
16 level, when we were debating this at the PUC, and
17 obviously the PUC is still considering this, we
18 had one observation that we put forward to the PUC
19 for their consideration in setting this level.

20 It's our sense that two phenomenon are
21 likely to occur in California as we go forward.
22 One, it's increasingly hard to site facilities
23 near the coast. So facilities are going to be
24 probably sited in drier temperature regions, in
25 Central California in the desert region.

1 There's also a movement for dry cooling.
2 Both of these phenomena have the effect of
3 potentially decreasing the efficiency of some of
4 the units. Combined cycle units, for example,
5 which has the effect of raising the emissions
6 level.

7 We were actually recommended a level
8 slightly higher than the 1100 that has been talked
9 about and recommended by the staff at the PUC. I
10 think we recommended 1200 to provide a margin of
11 error for that potential change in where units are
12 now likely to be sited in the future. But still
13 attain the goal of what we understood was to be
14 primarily an approach to insure that relatively
15 high emitting facilities were outside the
16 portfolios of the utilities.

17 So I just throw that to you now as a
18 slightly different perspective looking forward on
19 what may happen over the next five, ten years in
20 this, when you set the standard.

21 MR. WARNER: Again, Chris Warner for
22 PG&E. Mr. Kelly is far more technically adept
23 than I am on how to apply the standard, but I do
24 want to reinforce what he said and also Audrey for
25 NRDC. And we, in the CPUC proceeding, have

1 attempted to make sure that whatever standard you
2 set numerically is on an apples-to-apples basis.
3 We all agree on that.

4 How you establish it on an apples-to-
5 apples basis is a little bit technical, as Mr.
6 Kelly said. But you do need to take into account
7 we believe that the climate aspects, the ISO
8 standards for that, dry cooling, once-through
9 cooling, et cetera.

10 And then on the issue of flexibility
11 with the bill, I'm not sure I can ever remember a
12 time where NRDC and I think IIP and PG&E are in
13 agreement, but I suspect we are that we do not
14 read the bill as permitting a different size --
15 different approach for different sizes of
16 utilities. We believe it requires consistency in
17 the numerical standard. Thank you.

18 MR. JORDAN: I don't think that we
19 believe that there's anything in the legislation
20 that would prevent the PUC from setting a standard
21 that applied to power plants or to combined cycle
22 gas turbines up to a certain megawatt limit.

23 Recognizing that had we a little bit
24 more diversity in the IOU community in this state,
25 we would have different sized utilities that were

1 needing different things, just as you heard from
2 the gentleman from Modesto Irrigation District.

3 So I don't think for you to set
4 efficiency limits that deal with the size of the
5 plant that you're being requested to site in many
6 cases, that that is inconsistent at all with the
7 intent of the legislation. And it would certainly
8 be something that is necessary for utilities who
9 are trying to meet local reliability criteria, and
10 therefore can't build 1000 megawatt combined cycle
11 plant.

12 MR. McLAUGHLIN: Bruce McLaughlin.
13 Clarification. Small, medium and large power
14 plant, not small, medium and large utility.

15 Sometimes you can have a small state-of-
16 the-art combined cycle right off the showroom
17 floor, yet it's going to have a higher emissions
18 rate than a big power plant of 1000 megawatts.

19 PRESIDING MEMBER BYRON: Did we -- we're
20 honing in on numbers of 1100. And I heard someone
21 else say 1200. What if we were to go the other
22 direction? What if the PUC were to come out with
23 a number that was smaller, say 1000 pounds? Would
24 that change matters significantly for the POUs?

25 ASSOCIATE MEMBER GEESMAN: Well, our

1 staff report seems to frame it as 1000 to 1100.

2 So, I don't think 1000 pounds is off the table at
3 all, is it?

4 MR. LAYTON: The original PUC report had
5 come out to 1000. The final copy of that report
6 came out to 1100. I guess they were considering
7 both numbers. There was just a wealth of
8 discussion about what the number should be. I
9 thought it was appropriate to put both numbers in,
10 because that's what -- I guess in that range is
11 probably where it's going to end up, I assume.

12 ASSOCIATE MEMBER GEESMAN: Yeah, let's
13 see what the proposed decision is.

14 MR. SMITH: This is Richard Smith again
15 with Modesto Irrigation District. I just wanted
16 to comment that at 1000 pounds you are right on
17 the threshold of like the LM6000 combined cycle
18 plant, which is made up a pretty -- has a pretty
19 strong market share in California for certain
20 cogenerators and smaller utilities.

21 And, again, as the point was made, you
22 go to dry cooling and some other types of
23 technologies, it's going to be hard to show; and
24 right now we might be at 9500, 9600. So you're
25 right there. And that's why I think 1100 at least

1 allows a little more flexibility.

2 MR. HOWARD: Randy Howard, LADWP. I
3 have a couple of our combined cycles, I'm looking
4 here, are right in the 1100 range.

5 MS. CHANG: Audrey Chang, NRDC. I'd
6 like to just point out, I think we should remember
7 here that the SB-1368 does deem in compliance all
8 existing combined cycle natural gas plants. I
9 don't think it's the intent to eliminate those
10 from service at all.

11 So even though I agree there's, I mean
12 there are some existing combined cycle plants in
13 the state that are right around that standard, in
14 our view those would be already deemed in
15 compliance. And most of the newest technologies
16 that are coming onboard are going to be much
17 higher efficiency.

18 PRESIDING MEMBER BYRON: Thank you, Ms.
19 Chang. Mr. Howard, does that address your
20 concern?

21 MR. HOWARD: As long as we're talking
22 about new generation and not existing plants.

23 MR. SMITH: I guess it doesn't completely
24 address --

25 MR. HOWARD: And repowers, yeah. As

1 this goes to repowering. And when we talked about
2 repowering in LA's case, I mean we will be
3 repowering with combined cycle, best available
4 control technology.

5 PRESIDING MEMBER BYRON: Mr. Smith.

6 MR. SMITH: As will MID. However, we
7 have size restrictions in the capacity that we can
8 take on that's economically feasible for us. And
9 a new combined cycle LM6000 is the same boat we're
10 already in, which we put in in the 2002 range.
11 They haven't really changed in terms of their
12 efficiency. So we're still up against that 1100
13 number, we feel.

14 MR. POPE: I think just to kind of maybe
15 reiterate the comments about new power plants
16 going forward, they're going to meet -- gas fired
17 power plants are going to meet best available
18 control technology.

19 But the physics of the power plant, you
20 have emissions, is one thing you have to meet, but
21 you want to have the most efficient heat rate; you
22 have the cooling options. It seems like you do
23 not want to put a requirement on one of those kind
24 of outputs that is going to severely hamper a
25 couple other inputs to the plant to make it

1 efficient and reliable.

2 So, there's a balance here that needs to
3 be taken care of. And clearly I'm sure this
4 number isn't going to be here forever, but it's a
5 place to start. And it seems like 1100 is a
6 reasonable place to end up to kind of balance the
7 dimensions of the physics around power plants.

8 MR. LAYTON: Okay. Moving on, I have a
9 short question here about coal. Because many of
10 the POUs do seem to own coal, or seem to be
11 interested in coal, are there any -- is there any
12 interest out there in advanced coal that might
13 meet the standard at 1100? Anybody aware of it?
14 Interested in it?

15 MR. CARNAHAN: Bill Carnahan for SCPPA.
16 A number of my participants, as you well know, are
17 involved in a large coal-fired project in Utah.
18 And we are going to be announcing in a couple of
19 weeks, as soon as the SCPPA Board approves the
20 development agreement, exploring.

21 LA's going to be the project manager for
22 the six cities who are involved. Actually doing
23 feasibility and economic studies on putting IGCC
24 with CO2 sequestration at that site to determine,
25 you know, can it be done. If so, how much is it

1 going to cost.

2 And at the same time doing a parallel
3 study on the existing two units that are over
4 there to see whether or not they could be brought
5 into compliance with 1368. So we'll be announcing
6 that in a couple of weeks.

7 And then once those two studies are
8 complete, depending on what they say, we're
9 prepared to do a third study which would actually
10 be trying to see how, if a new project is built,
11 how that could be integrated with the phase-out of
12 the existing facility that's there, over the
13 balance of the contract term.

14 So, stay tuned; you'll hear something
15 about that in a couple of weeks.

16 MR. LAYTON: So the standard wouldn't
17 preclude you from investing?

18 MR. CARNAHAN: With regard to the
19 existing units, folks are pretty skeptical as to
20 whether or not it could be brought into
21 compliance. But we want to take an objective look
22 at that to see. I don't have the answer to that
23 yet. So, we're trying to find out.

24 MR. LAYTON: I guess that addresses my
25 question on demonstration projects with

1 sequestration. I assume the --

2 ASSOCIATE MEMBER GEESMAN: Let me say on
3 that, Matt, there have been some assertions made
4 that the oxyfuel technologies may be able to
5 achieve emission rates comparable to a natural gas
6 fired combined cycle. I've not seen a number
7 associated with that. And obviously there are no
8 demonstration projects that would actually provide
9 field data thus far.

10 But I think it's something that would be
11 a good candidate for ongoing scrutiny probably by
12 our PIER staff in terms of both the EPRI and DOE
13 advanced coal technology activity.

14 We participate in the WESTCARB
15 sequestration program, and have a pretty good
16 exposure in the PIER group as to development in
17 advanced coal technology. And I think it's one of
18 the things we ought to take on on a continuous
19 basis to advise both ourselves and the CPUC and
20 the Legislature as to just what the level of
21 developments in those technologies is.

22 MR. LAYTON: This actually goes to NRDC.
23 I was curious about the use of backup fuels, some
24 of the liquid fuels that are used for backup at
25 natural gas facilities. Would that be included in

1 the emissions, total emissions from the facility
2 or the unit?

3 It's a small number, but again, some of
4 these, if the standard becomes tighter and some of
5 these units are closer to the standard or
6 noncomplying, they start to count their backup
7 fuel, the use it on occasion.

8 MS. CHANG: I think I'd have to consider
9 that a little bit more and just think about that a
10 little bit more. So, I'd prefer not to
11 actually --

12 MR. LAYTON: Okay.

13 MS. CHANG: -- state a position at this
14 time.

15 MR. LAYTON: In your written comments
16 you discussed that you prefer not to see blending.
17 And I assume that's across the portfolio. Would
18 you consider blending at a facility, at one unit,
19 perhaps? If it has multiple fuels, including say
20 a biomass that was valued at zero emissions, would
21 you back out the megawatt hours produced by the
22 biomass and only count the megawatt hours produced
23 by the fossil fuel for compliance with the
24 standard? Or would it be all the megawatts from
25 the unit and the input from the biomass would be

1 zero CO2, and the input from the fossil would be
2 whatever it was. And so it would comply probably
3 very easily at that, given that numerical adding
4 of the two CO2s, one of them being zero.

5 Again, are you interested, can you blend
6 at one unit if you can't blend across the
7 portfolio?

8 MS. CHANG: No. I mean I think it's
9 beyond just a preference for no blending. I think
10 -- I don't think SB-1368 allows for it.

11 MR. LAYTON: Okay.

12 MS. CHANG: In the statute. I think
13 it's very clear that it should apply to each
14 individual facility. And as for individual units,
15 like different units in a facility, our position
16 is that each one should be evaluated separately if
17 they're -- I mean if there's one that's -- the
18 example that I've heard people bring up, is if
19 there's a peaking unit facility and a baseload
20 unit facility, if it's the peaking unit then it
21 shouldn't even go to the gate, per se. That
22 standard shouldn't even apply to it. But the
23 baseload facility it should.

24 MS. GRIFFIN: Matt, I want to clarify.
25 I thought your question was slightly different,

1 which was --

2 MR. LAYTON: It was.

3 MS. GRIFFIN: -- at a unit, one thingy,
4 one train, if that thingy burns both a biobased
5 fuel and a fossil-based fuel at different times of
6 the year, or you know, what is the sort of the
7 megawatt hour underneath that you use to compare
8 the carbon to.

9 Is it the fossil portion of the year, or
10 is it the whole output of that unit, that single
11 train, which --

12 MS. CHANG: In that case it would be the
13 fossil part of it, because in our position the
14 biomass part should be assigned an emissions value
15 of zero.

16 MR. LAYTON: So the total CO2 emissions
17 would be the zero plus the emissions from the
18 fossil.

19 MS. CHANG: Right.

20 MR. LAYTON: And the total megawatts
21 would be the total megawatts from that unit.

22 MS. GRIFFIN: That's the question.

23 MR. CARNAHAN: Would it be the total
24 megawatt hours assigned to that fuel which might
25 be less than 60 percent, then it wouldn't be

1 effective, would it? You wouldn't assign all the
2 kilowatt hours to the fuel that was generated with
3 the acceptable fuel, would you?

4 If you took only the part that needed to
5 comply under your splitting concept and applied it
6 only to those kilowatt hours that it generated, it
7 would probably be under 60 percent.

8 MR. HOWARD: Maybe I can give a real
9 example. LADWP, we have Hyperion gas, the gas
10 comes out of the Hyperion Sewage Treatment Plant
11 on a continuous basis. We have to keep one unit
12 running around the clock to burn that gas. It's a
13 steam unit, combined cycle. In most of our
14 reviews of combined cycle it's probably not robust
15 enough to handle that type of gas. So we do a
16 blend gas on a steam unit.

17 You would say you're utilizing it to
18 probably 60 percent or greater capacity factor.
19 But you're only really running it for the purposes
20 of this digester gas coming out, but you have to
21 use natural gas to blend it sufficient to keep
22 this unit operating.

23 And it's unlikely that you're going to
24 find a combined cycle currently that you could use
25 for that purpose. So, there's a blend. And it's

1 uncertain to us how we would handle that.

2 MR. KELLY: I have another blend that
3 I'd be interested. Let's take a solar facility
4 with gas backup that is eligible to run, say, 25
5 percent of the time. Now, I have no idea what
6 that gas performance is, but I suspect it's not
7 the most efficient gasline that you can get in the
8 market today.

9 So, what happens to that solar facility,
10 solar thermal? Let's assume that renewables are
11 not automatically exempted, and so far they would
12 have to go through this gateway.

13 MS. CHANG: Okay, so I think I was
14 understanding your initial questioning. So we're
15 talking here more blended fuels, is that correct?

16 MR. KELLY: Well, the way I understood
17 the blend described just there was the backup.
18 And a solar thermal facility today will operate,
19 say it's a 100 megawatt solar thermal facility, it
20 will be rated at that. But it will have a backup
21 gas-fired capability to maintain its output.

22 And as a QF, for example, you're
23 eligible to use, I think, up to 25 percent gas at
24 any point in time during the course of the year to
25 support that resource.

1 The description that I heard to describe
2 blended captured that kind of facility. And then
3 the answer that I heard suggested that you would
4 use the gas piece for the measure of whether that
5 facility would pass the test. And I think a solar
6 facility wouldn't pass that perhaps.

7 MS. CHANG: I think if you're looking at
8 blending the fuels, per se, in this case, then
9 it's a different aspect than having separate -- in
10 one unit, right, okay, so thanks for the
11 clarification -- I think in that case you probably
12 would have to look at the entire facility.

13 Because if it truly is an integral part
14 of the entire facility; if they cannot -- it's not
15 separated unit by unit, in that case then you
16 would look at the entire facility.

17 MR. KELLY: So you would, over the 5000
18 hours of the year that it might operate you would
19 take zero emissions for the solar hours, for
20 example, up to 80 percent of the hours. Then you
21 would add the emissions associated with the gas
22 and come out with an average annual hourly
23 emissions that way? Is that how you'd do it?

24 MS. CHANG: I'm not sure if I'm
25 understanding exactly what you're --

1 MR. KELLY: Well, let's say the
2 emissions is 1200 every time you run the gas piece
3 of the solar facility, but you only run it for 20
4 percent of the hours of the year. And when you're
5 running pure solar off the sun you've got zero
6 emissions.

7 MS. CHANG: Well, then I think --

8 MR. KELLY: So you've got a blend --

9 MS. CHANG: -- in that case then I
10 don't' think it would even -- the standard
11 wouldn't necessarily apply.

12 MR. KELLY: It's a single facility
13 seeking a long-term contract. And it's solar, but
14 it runs with a gas backup.

15 MS. CHANG: Well, I think in either case
16 if you looked in either situation, either if you
17 look at it one, on the purely separating it out,
18 looking at the gas side versus the solar side.
19 The gas side is, as you said, maybe 20 percent.
20 You're looking at it like that, it wouldn't -- the
21 standard wouldn't even apply.

22 If you split it out like that. But then
23 if you -- maybe I'm not -- just not getting it --

24 MR. KELLY: Whenever we design this we
25 have to probably make sure that we're not

1 precluding the solar facility that has gas backup
2 from being able to -- I mean that's not --
3 obviously was not the intent. So, however you do
4 this, I just want to put that scenario out there
5 for your consideration. Either how you define
6 blended, or how you're going to track the
7 mathematics to figure out what the average annual
8 rate is or something. I don't think that's what
9 we want to do.

10 MR. LAYTON: I think we're going to move
11 on because I think --

12 MR. KELLY: Yeah, you got it.

13 MR. LAYTON: -- we can discuss this, I
14 guess, in writing. But this goes to similar
15 issues I have, one of which is this backup fuel,
16 which is a higher carbon fuel, liquid fuels in a
17 natural gas facility.

18 Also we have some units that burn a
19 mixture of coke and petroleum -- petroleum coke
20 and coal. And if there is some value to petroleum
21 coke being used instate, and it's deemed as a
22 waste fuel, perhaps not a renewable, but perhaps
23 there's a waste fuel, which is not called out in
24 1368.

25 Again, how would you blend those two

1 fuels, coke, which is perhaps a desirable fuel,
2 and coal, which has a high CO2 number? How would
3 you blend those in a single unit?

4 And also going just to coals and
5 biomasses being used in one unit. And there are a
6 lot of mass burners in the state that burn a real
7 mixture of fuels. Some of which may be qualified
8 as renewables; some of which may be MSW, which are
9 not renewable. But how would you blend those?

10 These are very small points, but they
11 affect different facilities differently. So I
12 guess just how you blend various fuels in one
13 facility, I think it would really help if you'd
14 clarify that a little bit more.

15 MS. CHANG: We'll clarify that in
16 our --

17 MR. LAYTON: Thank you. I guess jumping
18 ahead to I think DWP has talked to us about
19 microturbines, using flared gas from oil
20 production. Their heat rates are pretty poor.
21 They probably would not qualify even though they
22 operate as a baseload. They wouldn't meet the
23 standard of 1100.

24 And again, waste, while the flare gas
25 may be waste fuel, it is not a renewable fuel.

1 And therefore they would not satisfy the EPS.

2 MS. CHANG: And then in that case I
3 acknowledge there's different benefits to
4 different types of technologies, et cetera. But I
5 think that the standard here is very clear that it
6 is just an emissions standard.

7 MR. LAYTON: And then I guess there
8 was -- moving on to cogeneration, there's a lot of
9 discussion about how the cogeneration credit would
10 be calculated, or provided to the facility to
11 qualify, or to assist in its qualifying for the
12 standard.

13 The PUC discussed several methods. The
14 method that seemed to be agreed upon was just
15 converting the useful thermal into equivalent
16 megawatt hours, be it the conversion factor of
17 3413. I think that's a fairly generous credit.

18 And so I guess if there's any other
19 comments on that conversion factor, I guess I'd
20 love to hear that.

21 The PUC also discussed avoided emissions
22 as if the useful thermal had been generated in a
23 boiler at 80 percent efficient. There was also
24 some discussion of the PURPA method where you
25 discounted the useful thermal by 50 percent before

1 you convert it into megawatt hours.

2 All have been used in the past for
3 various things. In this case currently I believe
4 the workshop summary that the PUC put out is
5 looking at the straight conversion.

6 MR. HOWARD: Randy Howard, LADWP. How
7 would staff propose that we, as load-serving
8 entities, in dealing with all of our cogen
9 customers, what's our responsibility in a number
10 of those? Is this going to apply to them and not
11 to us as being responsible in those long-term
12 interconnection agreements? Or do I have to
13 validate those types of conversions and issues?

14 MS. GRIFFIN: To whom are they selling
15 their electricity?

16 MR. HOWARD: Their primary purpose of
17 their heat and electricity is their own purpose.

18 MS. GRIFFIN: Right.

19 MR. HOWARD: We are interconnected and
20 sign a long-term agreement. So when there's
21 occasions where there's netting required because
22 they're generating more than they're using maybe
23 in the offpeak hours, then we have a mechanism by
24 which we'll take that power. Or also sell them
25 supplemental power when they're not generating

1 sufficient.

2 My question to staff is how are we
3 supposed to handle that transaction or the
4 validation as to those issues.

5 MS. GRIFFIN: Okay. I think there's a
6 way through this. Do you have a contract with
7 them for the purpose of obtaining baseload power
8 for your customers? Is that the primary purpose
9 of the contract?

10 MR. HOWARD: No.

11 MS. GRIFFIN: No. It's not your
12 problem.

13 MR. HOWARD: Okay, so because there --
14 but do I need to inform my 30 cogen customers that
15 they're subject to your rules because they're
16 operating these baseload units within the state?

17 MS. GRIFFIN: No, they're self-
18 generating. For their own purposes.

19 MR. LAYTON: No, they're selling to
20 someone. Are they selling to you or to someone
21 else?

22 MS. GRIFFIN: If they're selling to
23 Edison it's not your problem.

24 MR. HOWARD: They're primarily using it
25 themselves, but --

1 MS. GRIFFIN: Right.

2 MR. HOWARD: -- they're generating
3 electricity within the state. And then they sell
4 excess to me typically. But at 60 percent
5 capacity, are they operating at 60 percent, yes,
6 they are. If that's your threshold, they are
7 operating at 60 percent under a cogen scenario.

8 MS. GRIFFIN: The Energy Commission is
9 responsible for publicly owned utilities under
10 section, what is it, 964.1, whatever it is, they
11 are that.

12 MR. LAYTON: Well, but --

13 MS. GRIFFIN: But --

14 MR. LAYTON: -- they are designed and
15 intended to operate as baseload. And --

16 MR. HOWARD: And I have a contract with
17 them.

18 MR. LAYTON: But no, -- Audrey keeps
19 saying that if this goes back to the facility. So
20 it seems like it would be our problem.

21 MS. GRIFFIN: No, it isn't.

22 MS. CHANG: I think so. I mean I think
23 it is because it's -- sorry --

24 (Laughter.)

25 MS. CHANG: 1368 doesn't in any way

1 govern those generating facilities. But it does
2 require you, as a POU, if you are supplying, if
3 you're getting baseload electricity for your
4 customers, then the standard applies to that
5 baseload electricity. Any and all -- any baseload
6 generation supplied under that, as a part of that,
7 does apply.

8 MR. HOWARD: Am I receiving baseload
9 generation, is that the threshold here? Or is it
10 that it operates as a baseload unit in a contract?
11 I'm looking for that clarification because I've
12 heard it both ways here today.

13 Is it operating as a baseload -- okay,
14 so then I contract with them for 5 megawatts and
15 it's not -- it's less than 60 percent so it's a
16 variable. I only want it during the peak, but
17 they operate 100 percent of the time. But that
18 doesn't apply?

19 MS. DeCARLO: It goes to whether you're
20 being supplied baseload generation. So we're
21 looking at the underlying facility to determine if
22 it's a baseload facility. Is it operating at 60
23 percent annualized capacity factor.

24 And, two, are you being supplied with
25 that generation, with any portion of that

1 electricity. I think those are the two factors
2 you would need to look at to determine if the
3 statute is triggered.

4 MS. LUCKHARDT: So then just to clarify,
5 Lisa, what you were saying, you have almost a two-
6 part test. The first part is is the facility
7 baseload; the second part is is the contract for
8 baseload.

9 So, if neither of those are true, then
10 is it not baseload to the POU.

11 MS. DeCARLO: I think the baseload
12 issue has to go to the facility, itself. And the
13 contract issue is are you being supplied. You
14 don't have to necessarily be supplied with
15 baseload, quote-unquote, generation. You could be
16 contracting for your peak needs, as long as the
17 facility, itself, is operating at a 60 percent
18 annualized capacity factor or more, I think the
19 statute is triggered.

20 MS. LUCKHARDT: I think this still is
21 somewhat of a little bit of an open question,
22 especially in light with what Ms. Fitch's
23 presentation this morning is, that the PUC is
24 still grappling with that issue. And we see that
25 as still an open issue and not completely resolved

1 at this point a to whether it's based on the
2 operation of the facility, itself, or the
3 contract.

4 MR. HOWARD: And I'm still confused. As
5 the --

6 (Laughter.)

7 MR. HOWARD: As the load-serving entity,
8 what's my obligations and responsibility with that
9 contract for my cogen customers?

10 MS. GRIFFIN: And the answer is the
11 answer that just came from the lady on your right.
12 It's an open issue. You phrased the issue. We're
13 all going to have to deal with it.

14 MR. McLAUGHLIN: Two comments. First of
15 all, we're not load-serving entities, so I never
16 say that word.

17 (Laughter.)

18 MR. McLAUGHLIN: Since the statute does
19 distinguish. And with all due respect, we're
20 getting into the part that is very very complex.
21 We certainly have had absolutely no time to review
22 these things at our technical level. And so I
23 think if we were looking for more time it would be
24 to discuss these issues that you're asking. And
25 that's the response from the lawyer.

1 ASSOCIATE MEMBER GEESMAN: Well, and let
2 me say on that score that, you know, it's a little
3 bit worse than you describe it, because the PUC,
4 like it or not, is going to be the first mover on
5 this. We're going to have more clarity when their
6 proposed decision comes out in the next week or
7 two. We've got a workshop scheduled for early
8 January. We're going to have an opportunity to
9 talk this through.

10 So, the fact that it's in the can-of-
11 worms category today hopefully doesn't mean that
12 it's going to stay there a month from now.

13 PRESIDING MEMBER BYRON: We have
14 sufficient clarity on that item. Let's go to the
15 next one.

16 (Laughter.)

17 MR. HOWARD: I was wondering if Julie
18 might be able to enlighten us as to the direction.
19 No? Okay.

20 MR. McLAUGHLIN: What happened to
21 transparency?

22 (Laughter.)

23 MR. McLAUGHLIN: Quite seriously. We
24 have decisions made at the CPUC in secret by the
25 Commissioners. They put out their decision. We

1 get to look at it. But then when they adopt it in
2 their Commission ruling it becomes law
3 immediately, as the statute says.

4 You guys don't work that way; we don't
5 work that way. We're the local regulatory
6 authority. We do everything in the light of day.

7 And there are, I think, going to be
8 technical distinctions between the way we operate
9 our smaller units, our higher elevation units or
10 whatever, from a 20,000 megawatt IOU. And I just
11 have a hard time believing that whatever the CPUC
12 comes out with will be -- will be able to, I guess
13 it's not rubber any more, right -- but put it over
14 us and say it's going to work in all cases.

15 So we want that opportunity, certainly
16 after the PD comes out, to talk more.

17 ASSOCIATE MEMBER GEESMAN: Well, and I
18 think you absolutely deserve that opportunity.
19 And remember, we haven't defined what consistent
20 means. So, this is an ongoing process.

21 It's a short process, you know, and I
22 know a number of us object to the fact that it's a
23 short process, but there's not a member of the
24 Legislature in the room. So none of us can change
25 that.

1 But we are going to talk it through.

2 MR. WARNER: I may be speaking against
3 my own interest, but I did want to reference that
4 in fact the CPUC Staff workshop report does have
5 some detail on this issue at page 23, next-to-last
6 paragraph. And I think that my reading is that
7 the staff workshop report, at least, is tending
8 toward what NRDC's position is in terms of looking
9 at the underlying facility primarily, rather than
10 the size of the resource commitment. Just wanted
11 to pass that along. Again, it's page 23 of the
12 staff workshop report, the next-to-last paragraph.

13 So I think there may be, although we
14 have gone through the same sort of process at the
15 CPUC and tried to struggle with some of these
16 confusing definitional issues, there may be more
17 clarity in the staff workshop report than you all
18 may be discerning today. I think they have tried
19 to do a pretty good job at the CPUC on
20 encapsulating these issues.

21 MS. FITCH: Let me just also reiterate
22 that I'm actually here listening today; and in
23 fact, we do appreciate the fact that a lot of the
24 municipal utilities filed comments in our
25 proceeding. So we're doing our best to address

1 everybody's concerns on this as we come out with a
2 proposal, which, by the way, does become subjected
3 to additional comments.

4 So, you know, there will be multiple
5 opportunities to refine this further.

6 MR. LAYTON: To follow up to what Randy
7 had asked. I don't think we have an answer, staff
8 does not have an answer yet as to how he should
9 get his cogenerators to report to him, but we'll
10 obviously try to address that.

11 Moving on to waste fuels. There are a
12 variety of fuels used in the state, and a lot of
13 them are not biomass. How we should treat them I
14 think is of interest to some of the smaller
15 projects out there. Right now would be a strict
16 reading of 1368 suggests that they would be
17 treated as a regular fossil fuel, not a biomass or
18 renewables. And therefore their CO2 emissions
19 would be valued at their -- as if they were
20 complete and total CO2 emissions.

21 MR. CIPLET: Dave Ciplet; I'm with
22 Global Alliance for Incinerator Alternatives. I
23 just want to make a few points on that.

24 Looking at waste fuels, the combustion
25 or incineration of municipal solid wastes we

1 feel -- we want to make sure that it doesn't get
2 lumped in with biomass or considered renewable
3 energy or exempt from actually calculating the
4 real emission levels from the facilities.

5 We have data -- I have a study here that
6 looks at incinerators throughout Europe, municipal
7 solid wastes. And looking at the studies there's
8 different ways that it can be evaluated. There's
9 several different graphs. But, in most scenarios
10 these facilities would not qualify within this
11 law.

12 We recommend that there's a full
13 lifecycle evaluation of looking at the emissions
14 coming from municipal solid wastes. And this
15 includes looking at the facility, itself, of
16 synthetic materials that are being combusted
17 within the facility.

18 Also looking at materials, biogenic
19 materials like paper, that could be recycled
20 otherwise, which are -- there's very high CO2
21 emissions from that.

22 And then also looking at the embodied
23 emissions within having to, every material that
24 gets combusted, that material being remade and
25 extracted, transported, processed; as opposed to

1 if that material was processed, recycled or
2 composted.

3 So, we also want to make clear that, you
4 know, this has to do with refuse-derived fuels,
5 any fuels made from waste and burnt in, you know,
6 coal-burning power plant, in a mix -- if we're
7 looking at mixed fuels, that we are looking at the
8 emissions from municipal solid waste as not a form
9 of biomass. Thanks.

10 MR. HOWARD: Randy Howard, again. I'm a
11 little uncertain as to which way you were
12 advocating there. I apologize.

13 LA is proceeding with looking at solid
14 wastes-to-energy projects. We have four proposed,
15 the first one coming online in 2010. The
16 proposals we're looking at would be a conversion
17 to a gaseous clean the gas, and then generate
18 electricity with the gas.

19 Are you saying those --

20 MR. CIPLET: So gasification, any
21 thermal treatment of municipal solid wastes. We
22 feel that there needs to be a full lifecycle look
23 at the greenhouse gas emissions from municipal
24 solid waste going into that facility.

25 MR. HOWARD: So basically an exemption

1 from just an 1100 number, but one that utilized
2 all of the lifecycle of the emissions.

3 MR. CIPLET: When determining -- my
4 point is when determining whether it meets the
5 1100 number, that there is a lifecycle analysis
6 going into that. And that it is not, that is not
7 exempt and considered biomass in some way.

8 Does that --

9 ASSOCIATE MEMBER GEESMAN: Randy, are
10 your projects likely to be RPS eligible?

11 MR. HOWARD: I hope so. That is our
12 objective.

13 ASSOCIATE MEMBER GEESMAN: So, Audrey's
14 suggestion that RPS-eligible projects be deemed
15 compliant --

16 MR. HOWARD: Yeah, and I think he's
17 arguing that they're not.

18 ASSOCIATE MEMBER GEESMAN: Yeah, I think
19 he's arguing for something separate for those
20 projects that are not RPS-eligible.

21 MR. HOWARD: Right.

22 MR. CIPLET: But my point also is that
23 whether it's RPS eligible or not, in the future
24 there might be a different RPS standard and that
25 when this law is passed, we should be looking at

1 the emission levels from the facility and from the
2 materials going into that facility.

3 And, you know, whether those projects
4 are approved or not, that, you know, they
5 shouldn't just be exempt because they qualify for
6 an RPS.

7 MR. KELLY: I have one clarifying
8 question. As I recall the legislation there was
9 specific language that spoke about netting vis-a-
10 vis the biomass, biogas facilities. But then
11 there was a clause right before that that spoke
12 more generally about the concept of netting, as
13 well, that might apply to petroleum coke
14 facilities or some of these kinds of facilities.

15 Where and when is this Commission going
16 to be looking at that issue where facilities or
17 groups such as his, or the petcoke guys can come
18 in and talk about, or make the case for a
19 methodology for calculating the net emissions? Is
20 that going to occur here before the rules are
21 drafted?

22 ASSOCIATE MEMBER GEESMAN: Well, in the
23 ethanol area it took about 25 years --

24 (Laughter.)

25 ASSOCIATE MEMBER GEESMAN: -- for a

1 scientific consensus to emerge.

2 MR. KELLY: I know we're on the fast
3 track here. I'm going to give you an example in
4 the petcoke. Petcoke facilities, my understanding
5 generally is that if the petcoke were not burned
6 in facilities in California, that stuff would be
7 trucked to the docks; it would be put on a ship,
8 diesel, that is going to go across the ocean; sell
9 it to the Chinese who --

10 ASSOCIATE MEMBER GEESMAN: But we get
11 the particulates back.

12 (Laughter.)

13 MR. KELLY: Yeah, we get all that back.
14 But, my understanding was that there was going to
15 be a place for those kinds of technologies,
16 particularly, to make the case for an argument on
17 the net emissions. And these comments raise the
18 issue of when and where that will occur.

19 MS. GRIFFIN: Wasn't today time one and
20 January 11th is time two?

21 MR. KELLY: If that's time one and time
22 two, I mean this was noticed for the POUs. But
23 this is an issue that gets to the calculation on a
24 facility basis. And I don't think the facilities
25 actually were informed that this would be the

1 place for that argument, or debate would occur.

2 And I certainly didn't come prepared to
3 make that case. So, if it's going to be at the
4 next workshop, if you could put that -- I actually
5 think that's a day-long thing by itself, above and
6 beyond everything else that you're going to be
7 doing.

8 And if you're going to do that, please
9 make sure that other people, entities affected
10 other than the POUs, have an opportunity --

11 MS. GRIFFIN: If it's --

12 MR. KELLY: -- to prepare for that
13 debate.

14 MS. GRIFFIN: -- if it's really a
15 technical issue wouldn't it be desirable to get
16 written comments beforehand so people could read
17 that and think about it? Rather than trying to
18 hear it and understand it for the first time?

19 MR. KELLY: I think that would be good.
20 This was not the place that I thought it was
21 necessarily coming up. I hadn't seen these
22 questions, though I'd seen the report. I took
23 this to be a meeting primarily with a dialogue
24 with the POUs.

25 And this is an issue that, I think, sits

1 at the Energy Commission's plate, but is much
2 broader.

3 MR. COX: I would just like to flag --
4 this is Rory Cox from Ratepayers for Affordable
5 Clean Energy, the RACE Coalition. I would like to
6 flag it. It sounds to me like liquified natural
7 gas also belongs in this category. Where we're
8 talking about the lifecycle emissions, before it
9 gets to the power plant.

10 MS. CHANG: Audrey Chang, NRDC. From
11 our perspective I don't think that the statute
12 calls for the lifecycle analysis of fuels. I
13 think when it says net there's certain places
14 where it talks about here net emissions are
15 considered, one, as in thermal crediting for
16 cogen; two, in the treatment of the biomass; and
17 three, in the event that carbon emissions that are
18 permanently sequestered shouldn't count against
19 the total emissions of the plant.

20 And those are the three places where we
21 see that this net clause comes into play. And we
22 don't think that here, that the lifecycle analysis
23 is called for here.

24 MR. CIPLET: We'd also like to talk
25 about the intention of the bill, which is to

1 reduce greenhouse gas emissions. And if that is
2 the intention, and in the bill we are talking
3 about technologies, if there is a lifecycle
4 analysis for biomass, or you know, or
5 cogeneration, I think we need to look at what
6 qualifies within that.

7 And if we're talking about net, what is
8 the difference between net and a lifecycle
9 analysis.

10 MR. KELLY: My observation is what is
11 included or is not, what methodologies are adopted
12 or not, is something that's yet to be determined.
13 So we can have that in place as long as we have
14 the forum for that discussion.

15 And again, I just didn't think this
16 was --

17 (Teleconference interruption.)

18 PRESIDING MEMBER BYRON: Please put on
19 mute, someone on the phone.

20 My concern would be who's going to do
21 that. Is it going to be self-compliance, again;
22 or is it going to be the Energy Commission Staff
23 that's going to determine this full fuel cycle
24 analysis here?

25 ASSOCIATE MEMBER GEESMAN: Well, I think

1 Audrey captured the literal terms of the
2 statute --

3 PRESIDING MEMBER BYRON: Agreed.

4 ASSOCIATE MEMBER GEESMAN: --
5 accurately. So, you know, the task in front of us
6 is compliance with the statute and adoption of
7 regs, there's other worthy work to be done. And
8 it's something we probably ought to take up in
9 some other context.

10 MR. KELLY: Some other context outside
11 of this process?

12 ASSOCIATE MEMBER GEESMAN: Yeah, like
13 the IEPR process, or our PIER process.

14 MR. KELLY: Well, I don't have the --

15 ASSOCIATE MEMBER GEESMAN: I don't see
16 the petcoke example, Steve.

17 MR. KELLY: It's not called out
18 specifically, but as I recall, and I don't have
19 the bill in front of me, in the -- just before
20 they referenced the netting of emissions
21 associated with the biogas, biomass, I think there
22 was net in there somewhere.

23 ASSOCIATE MEMBER GEESMAN: There's an
24 output-based methodology for cogeneration.

25 MS. CHANG: The clause that people ar

1 talking about is section 8341(p)(3). And so it
2 does say that the Energy Commission shall consider
3 the net emissions resulting from the production of
4 electricity by the baseload generation.

5 And in our read of that the production
6 of electricity is where the emissions should be
7 measured.

8 MR. KELLY: That's the broader reference
9 that I was alluding to. So, --

10 MS. CHANG: And then in our read that
11 doesn't include lifecycle analysis.

12 MR. KELLY: And I'm not speaking to the
13 lifecycle necessarily; I mean I haven't even
14 gotten to that level of detail yet. But I did
15 think that there was going to be a forum for that
16 discussion because of that clause. And that was
17 our understanding when we were discussing this in
18 the Legislature.

19 ASSOCIATE MEMBER GEESMAN: I may be
20 looking at the wrong section.

21 MR. KELLY: I think it's (d)(2).

22 ASSOCIATE MEMBER GEESMAN: D as in dog?

23 MR. KELLY: Well, I'm looking at --

24 (Parties speaking simultaneously.)

25 MS. DeCARLO: The provision that applies

1 to the Energy Commission is (e)(3). It's
2 identical to (d)(2), but that's for the PUC.

3 MR. KELLY: Is that the PUC?

4 MS. DeCARLO: Yeah.

5 MR. KELLY: So the PUC's got it in front
6 of them at some point. The Energy Commission has
7 it in front of you at some point. There's going
8 to be consistency. And you seem to be ahead of
9 them on this issue, so that's why I'm here -- one
10 of the reasons.

11 MR. LAYTON: So I assume we could read
12 this very narrowly, just assume it's net megawatt
13 hours delivered to the grid and total emissions.
14 Or you could read it very broadly and assume it's
15 the lifecycle analysis.

16 MR. KELLY: Well, my understanding was
17 the concept of net emissions was going to be
18 developed more fully in some sort of workshop
19 process. And there's going to be probably a
20 robust discussion about that.

21 The general thought that I had was the
22 intent of this language is to not do something
23 that would actually result in increase of
24 emissions through the application of this policy.

25 So, people were going to have the

1 opportunity to make the case of, wait a minute, if
2 you do it this way it's going to increase net
3 emissions.

4 MR. CIPLET: If production is the key
5 word, I think how you define production is not --
6 I don't think that necessarily precludes looking
7 at emissions that take place in the larger cycle
8 of what creates that electricity or produces that
9 electricity. I don't think it just precludes
10 looking at the facility, itself.

11 MR. KELLY: There'll be a bazillion
12 opinions about that.

13 (Laughter.)

14 MR. KELLY: I just want to have the --
15 know the when and where.

16 So can I walk away from this podium
17 thinking that --

18 (Laughter.)

19 MR. KELLY: -- this is not it, though,
20 right? It's going to happen?

21 PRESIDING MEMBER BYRON: This is not the
22 when and where.

23 MR. KELLY: That's what I thought.

24 PRESIDING MEMBER BYRON: Yeah. I don't
25 feel -- I can't speak to the when right now.

1 MR. KELLY: Will the when occur before
2 you've promulgated your rules? Or before the --
3 and maybe, Julie, you have some idea about the
4 PUC's pace or schedule for this discussion?

5 MS. FITCH: To be honest with you, this
6 comes as a surprise to me. I wasn't in all the
7 workshops that we had in June, but this is the
8 first time I've heard discussion about this issue.
9 So, news to me.

10 MR. KELLY: Thank god I'm here.

11 (Laughter.)

12 PRESIDING MEMBER BYRON: You may now
13 walk away from the microphone.

14 (Laughter.)

15 MR. KELLY: With great clarity and
16 transparency, I might add, yeah.

17 MS. TURNBULL: Jane Turnbull. I have to
18 say I reacted emotionally to the word
19 incineration. I think that's a word that is used
20 too broadly and without good clarification.

21 I am a member of the Biomass
22 Collaborative Board of Directors, and I've heard
23 from the Integrated Waste Management Board a
24 number of times about the potential to use
25 segregated waste streams as an energy resource. I

1 think what LADWP is exploring is really very
2 important and I think it needs to be looked at in
3 a broader context.

4 And to preclude the development of
5 technologies that are able to use segregated waste
6 streams would be a mistake at this time. I know
7 that isn't directly on this issue, but I would
8 hate to see it eliminated.

9 ASSOCIATE MEMBER GEESMAN: But do you
10 think, Jane, that the suggestion by NRDC of
11 deeming RPS-eligible facilities compliant with
12 these regulations addresses your concerns?

13 MS. TURNBULL: Well, I happen to believe
14 in lifecycle analysis, so I --

15 ASSOCIATE MEMBER GEESMAN: Well, that's
16 a separate --

17 MS. TURNBULL: I know, I have a problem
18 here. I will go along with what NRDC is saying at
19 this point.

20 MR. CARNAHAN: I had a question on the
21 netting before we leave that, if this is -- it's
22 all right to talk about that. Because under the
23 waste fuel section the staff mentions the flaring
24 and the netting calculation.

25 We're looking at some landfill gas

1 projects where obviously the netting is a real
2 benefit. You know, based on our calculations if
3 we don't net it won't comply; and if we do, it
4 will.

5 And I guess, is there going to be a
6 definitive formula standard, you know, a statement
7 as to whether or not that works or not in the
8 final regulations, number one. And number two,
9 we're currently negotiating one right now, and
10 what do we do between January and June? Do we
11 dare sign that contract?

12 MR. LAYTON: I think the landfill gas
13 would qualify as RPS, renewable. The question
14 really went to this if you have oil production and
15 they're flaring gas in the field right now
16 producing CO2, if you avoid that CO2 being emitted
17 directly you get credit for it if you burn it in
18 something else.

19 Again, these are small amounts of fuel
20 burned in perhaps a microturbine that is not able
21 to meet the standard, the efficiency standard.
22 But does that -- do you calculate, do you net out
23 those emissions.

24 MR. HOWARD: I think what I heard was a
25 statement that if it's RPS compliant, as NRDC has

1 advocated, then it's automatically compliant to
2 the standard. But, you know, is that the approach
3 we're going to take? I mean, I like it; I just --
4 is that kind of the way we're looking?

5 MR. LAYTON: Landfill gas, I believe, is
6 RPS compliant. But flared gas from an oil
7 production field --

8 MR. HOWARD: Understood.

9 MR. LAYTON: -- is RPS.

10 MR. HOWARD: Yeah.

11 ASSOCIATE MEMBER GEESMAN: Yeah, I think
12 the netting question is a separate question. And,
13 you know, it may boil down best the way Bruce has
14 tried to frame this, where is the transparency
15 question. Is this something that both Commissions
16 are supposed to have taken into account in
17 establishing the emission standard.

18 Perhaps by implication we have, and we
19 just haven't documented how that fits in. Or
20 perhaps it requires a technology-by-technology or
21 facility-by-facility determination.

22 But it says that in determining the rate
23 of emissions for baseload generation the Energy
24 Commission, and the PUC has a parallel section,
25 shall include the net emissions resulting from the

1 production of electricity by the baseload
2 generation.

3 Supposed to make some kind of net
4 calculation. Doesn't tell us what, doesn't tell
5 us how, but it sounds like it's something we're
6 supposed to do.

7 MR. CIPLET: With looking at just the
8 RPS, the RPS, although it qualifies certain
9 sources, it also has additional language to
10 strengthen some of the sources; for instance, with
11 what are commonly called conversion technologies
12 there's a zero emissions clause with some of the
13 technologies that are proposed in L.A.

14 So, I think that to look at this
15 separately, it may tend to also reduce the
16 emissions and to evaluate, based on emissions
17 levels, from a particular facility, and a fuel
18 source is the intent of the bill.

19 MR. KELLY: Just as a clarification,
20 too. I think in terms of the definition of
21 eligible renewable resources which are RPS-
22 compliant, certainly municipal solid waste isn't
23 one of those.

24 I can't recall whether landfill gas
25 generation fits into that. For some reason that

1 eludes -- escapes my -- I know certainly the
2 petroleum coke stuff is not. Those are just solid
3 fuel QFs or anything else. So.

4 MR. LAYTON: We believe landfill gas
5 is --

6 MR. KELLY: Is an eligible renewable
7 resource?

8 MR. LAYTON: -- is, yes. Is an eligible
9 renewable.

10 MR. SHETLER: That is my understanding,
11 as well, from SMUD's perspective, that it is.

12 MR. LAYTON: Right. But solid waste is
13 not.

14 MR. SHETLER: Right, solid waste is not.

15 MR. CIPLET: But the gasification
16 technology is an eligible technology in the RPS,
17 which is used for municipal solid waste. Or at
18 least can be. So we'd like to preclude that from
19 happening.

20 MR. KELLY: I guess it's centrally teed
21 up now.

22 ASSOCIATE MEMBER GEESMAN: Thanks,
23 Steven.

24 MR. LAYTON: Okay, I think, trying to
25 move on. I think it was discussed earlier in the

1 day, greenhouse gas definition. Right now all the
2 discussions have been around CO2. There are five
3 other greenhouse gases that were originally
4 included in both the PUC proceeding and also our
5 proceeding, or in the piece of legislation here.

6 We have not addressed it in our issues
7 identification paper other than to mention that
8 there are five other greenhouse gases out there.
9 We think they're minor in contribution to the
10 overall CO2, CO2 equivalent.

11 However, I guess my concern or interest
12 here is that these other five greenhouse gases
13 have more global warming potential than CO2. They
14 may be produced in smaller numbers currently.
15 However, I guess, is that an outstanding liability
16 or an open-ended question for the POUs, that at
17 some point in time these numbers may be quantified
18 and may be added to the emissions from a unit, and
19 kick it over the emission level, or the EPS.

20 Is that uncertainty a problem with POUs?

21 MR. CARNAHAN: Are you talking about
22 subsequently setting new standards and applying it
23 to units after that? Or actually going back and
24 picking up units that are covered now?

25 MR. LAYTON: The legislation says we're

1 supposed to look at the greenhouse gas emissions
2 from generation, which would include all six
3 greenhouse gases, CO2 is the dominant one.

4 As we move forward, and I think the PUC
5 is taking a tiered approach, we will come back to
6 these other gases later. So we would like to be
7 consistent with that.

8 MR. CARNAHAN: Well, certainly to the
9 extent we're doing long-term purchases, for
10 example, that comply today, if they're long-term,
11 longer than five years, and three years from now
12 you come up with something that is, in effect,
13 retroactive. Yes, that would create a big
14 problem.

15 MR. LAYTON: Okay.

16 PRESIDING MEMBER BYRON: Do we have
17 reason to believe the POUs emit in higher
18 proportions per megawatt hour? That they emit a
19 higher value of these additional greenhouse gases
20 than the IOUs do?

21 MR. JORDAN: No, no, much less.

22 (Laughter.)

23 MR. LAYTON: Commissioner Byron, I think
24 that's the problem. We really don't know. The
25 POUs are reporting these numbers in the Registry.

1 But they're estimates. They're kind of doing
2 balances of what they purchase, what they recycle,
3 what they believe they lose or dispose of. For
4 some of the numbers, like the N2O, I think they're
5 just emission factors based on the fuel and the
6 amount of combustion that goes, you know, they use
7 to generate electricity.

8 They're really not measured, so they're
9 not as precise, say, as the CO2 numbers.

10 ASSOCIATE MEMBER GEESMAN: You're not
11 suggesting that we would go forward with anything
12 without the PUC doing the same, are you?

13 MR. LAYTON: I'm not suggesting that;
14 I'm just -- we are not --

15 ASSOCIATE MEMBER GEESMAN: You aren't
16 suggesting that we do anything with retroactive
17 impact, are you?

18 MR. LAYTON: I'm not suggesting that.
19 I'm just asking -- we're not determining a number
20 at this point in time. Is there a concern that if
21 at a later date the number does come out, and
22 perhaps pushes some units or contracts in the
23 future. And that there's a consideration of them
24 at that point in time, would that be a problem.

25 MR. JORDAN: It would seem to me that if

1 your standard is to develop a greenhouse gas
2 emission standard that is based on a combined
3 cycle plant, that even if you add other gases
4 wouldn't you still come to the same conclusion
5 about what plants qualify?

6 MR. LAYTON: If the emissions from --
7 the greenhouse gas emissions from a combined cycle
8 include the other numbers, and say increase the
9 overall CO2 equivalent number, from 1100, says, it
10 goes up to 1110 or 1150 --

11 MR. JORDAN: But wouldn't you have a
12 standard for the pounds of -- the emissions of CO2
13 and a separate standard for the pounds of
14 emissions of what the other gases are? Wouldn't
15 they all be based on the same combined cycle
16 plant?

17 MR. LAYTON: Yes, they would be based on
18 the combined cycle plant, however different plants
19 may emit at different rates, similar to what the
20 had the CO2 numbers are different for different
21 plants, as well.

22 MR. JORDAN: Well, you better raise that
23 number then.

24 MR. SHETLER: Jim Shetler from SMUD. I
25 think from our perspective what we need to be

1 focused on is CO2. I think we need to focus on
2 relative to where we're at today. There's another
3 whole proceeding going on with AB-32 that's going
4 to get into a lot more details on what all this
5 means. And I think we need to let that process
6 take that on.

7 I would not suggest we try to add this
8 to this proceeding here.

9 (Pause.)

10 MR. LAYTON: I think we've already
11 discussed there are differences between POUs and
12 IOUs. And I don't believe this was my question,
13 so I -- question 4.8, if there are comments about
14 it, I think we've -- that particular point has
15 been discussed to death today.

16 And we also discussed the net emissions
17 calculated in blended contracts. I think we've
18 discussed unit versus facility. Gary's kicking me
19 so I'm trying to move forward. We've also
20 discussed the issue of units, if some units at the
21 facility do not meet the 60 percent because
22 they're peakers, they should not be included in
23 the EPS compliance calculations.

24 We've discussed biomass, biogas,
25 landfill gases. I think this goes to Randy's

1 question somewhat. If he has a contract with a
2 biomass plant, how does he gather the information
3 about the CO2 emissions from the growing,
4 processing of that biomass that goes into that
5 electricity generation.

6 The biomass, biogas, landfill question
7 is rather -- I guess the section 4 that talks
8 about the -- or section 5 talks about the net
9 emissions, including the growing and processing of
10 the fuel. I guess if that isn't lifecycle
11 analysis, what is it supposed to be? I guess the
12 question goes to Audrey.

13 MS. CHANG: Sorry, repeat that last part
14 of the question?

15 MR. LAYTON: Well, I guess, how are we
16 supposed to -- how would you treat the CO2
17 emissions from the growing and processing of these
18 biogas, biomass fuels?

19 MS. CHANG: So, here I'd also recommend
20 a similar approach, sort -- I mean taking a
21 general look at biomass with all those factors
22 taken into account. There has been data that has
23 been submitted within the PUC proceeding. So I
24 suggest that you take a look at that.

25 And from there, I'd suggest an upfront

1 determination that those resources are deemed in
2 compliance.

3 And so then each individual POU, IOU, et
4 cetera, wouldn't have to go through that
5 individual calculation, themselves.

6 MR. LAYTON: Okay.

7 MR. CARNAHAN: I have a question on 4.10
8 which I think, if we're on the question --

9 MR. LAYTON: Yes.

10 MR. CARNAHAN: -- you're talking about
11 near it, it talks about netting and makes a
12 specific reference to landfill gas on the dumping
13 and compaction and whatnot. If landfill gas is
14 exempt, why would we be asking those kinds of
15 questions? I thought the page before we said it
16 was exempt.

17 MR. LAYTON: Well, I think there's a
18 belief that the simplest solution is to exempt the
19 renewables.

20 ASSOCIATE MEMBER GEESMAN: I think we're
21 using the phrase deemed compliant as opposed to
22 exempt.

23 MS. DeCARLO: The statute --

24 MR. CARNAHAN: If it is deemed compliant
25 would we not avoid confusion if we just took it

1 out of this? So we don't have to constantly go
2 back and have my members say, well, it says right
3 here, you know? Make my life a lot easier.

4 MS. DeCARLO: I think we still have to
5 justify why these certain facilities are, quote-
6 unquote, exempt. The statute directs us to take
7 into account the net emissions from the growing
8 and processing. I think we still have to do some
9 sort of report.

10 ASSOCIATE MEMBER GEESMAN: The NRDC
11 points out that there's a record at the CPUC that
12 would support this.

13 MS. DeCARLO: And that would be
14 sufficient, I think. But we can't just say
15 they're exempt and we don't have to look at it.
16 We just need to substantiate why, pursuant to the
17 statute, we don't have to be concerned with the
18 applicability of the EPS to these facilities.

19 MR. CARNAHAN: That would be helpful --
20 in any of the ancillary questions that contain
21 those, if those could be taken out that would be
22 very helpful.

23 (Pause.)

24 PRESIDING MEMBER BYRON: While the
25 staff's debating whether or not there's additional

1 questions to be asked in this section, let me ask
2 all of you, does anyone have something else they
3 want to contribute with regard to chapter 4
4 emissions performance standard?

5 MS. GRIFFIN: We did get our act
6 together over here.

7 PRESIDING MEMBER BYRON: I'm sure you
8 do.

9 MS. GRIFFIN: Slowly. And that was the
10 issue about does there need to be a case-by-case
11 exemption for reliability or for overall cost to
12 consumers. There's an element at the very end of
13 the statute that says the Energy Commission should
14 take into account reliability and overall cost to
15 consumers in setting the standard.

16 And some people have proposed that there
17 could conceivably be a case, particularly for
18 reliability, where you all might be retrofitting
19 an older unit in your local reliability area,
20 which didn't pass the standard. And is there any
21 rationale -- is it allowable under the statute or
22 desirable under the statute to have some kind of
23 case-by-case exemption process to deal with
24 reliability.

25 MS. CHANG: I can -- just as a quick

1 NRDC position, we don't see that the statute
2 specifically calls for any sort of exemption on
3 this front. It does just say that the
4 Commissions, both the CEC and PUC, should consider
5 the effects of reliability and overall cost to
6 consumers.

7 And I mean we definitely agree that
8 reliability is a concern for the state. But we do
9 think that in looking at how the standard,
10 especially partially as laid out in the statute,
11 and as it also how we propose, it's designed
12 explicitly to protect against reliability
13 concerns. And there's some design features that
14 help toward that goal, and that it's aimed at
15 facilities that are generating at an average
16 annual capacity factor of 60 percent or greater.
17 It's not going for the peaking facilities at all.

18 It's five-year-long commitments or
19 greater; and not for the short-term purchases that
20 are needed for reliability purposes.

21 And then also the upfront approval that
22 wouldn't require ongoing monitoring that would
23 then subsequently perhaps have the possibility of
24 pulling a plant out of service.

25 MR. HOWARD: I don't think it's

1 applicable at all. I think this applies to new
2 generation and new or renewed contracts. I think
3 it doesn't apply to any of the existing
4 facilities. And so we wouldn't really be under
5 that scenario.

6 MS. GRIFFIN: Well, let's posit that
7 when we get to the section of new financial
8 commitment there are some people who will say that
9 new financial commitment includes extension of
10 life for more than five years investments which
11 extend or allow a unit to operate for more than
12 five years.

13 In that case -- and we're bringing this
14 specifically because LADWP raised the issue when
15 describing some of their own steam boilers, and
16 some of the concerns that they have with the
17 retrofit of their steam boilers. And you have a
18 lot of them.

19 MR. HOWARD: Correct.

20 MS. GRIFFIN: And so what would happen
21 if those units were retrofit for dry cooling, or
22 they were retrofit for some other reason, that
23 their life would otherwise terminate? No longer
24 be allowed to operate.

25 If we're in that scenario, and if

1 there's a decision made that that constitutes a
2 new financial investment, then what do we do if
3 there's a legitimate reliability issue in that
4 area?

5 MR. HOWARD: I think one of the concerns
6 we raised, as well, is if the 316(b) studies or
7 other regulations require us to do a modification
8 to an existing steam unit that requires a
9 financial commitment, should that trigger? If
10 that were the case of the regulation on the new
11 investment, should that trigger then the emission
12 issue. If we had to go to a dry cooling because
13 the once-through cooling was terminated.

14 MR. WARNER: Commissioners, may I at
15 least provide a little bit of the input from our
16 similar discussion before the CPUC. We, at PG&E,
17 respectfully have disagreed with NRDC on this
18 issue, but reasonable minds can differ.

19 Our position in the CPUC has been that
20 the Commission has the authority, under the
21 statute, to provide a case-by-case exemption
22 approach for reliability concerns, as well as cost
23 and affordability concerns under the emissions
24 performance standard.

25 Part of that stems from the fact that at

1 the very beginning of the workshops at the CPUC,
2 even before the statute was enacted, almost all
3 the parties unanimously said the number one
4 priority here is to make sure we keep the lights
5 on in terms of administering this emissions
6 performance standard.

7 And so a lot of us basically came to the
8 consensus that there needs to be some sort of
9 safety valve, if you will, or opportunity in the
10 event of a serious reliability issue, to have that
11 be provided for flexibly under the emissions
12 performance standard.

13 And so I believe the staff workshop
14 report from the CPUC does, in fact, provide for
15 that case-by-case exemption. Although it's a
16 case-by-case exemption, it's limited within the
17 discretion of the regulator. And we agree that
18 the entity seeking the exemption would bear a very
19 heavy burden to make the case that a reliability
20 exemption is required.

21 So at least that's where PG&E is on the
22 issue.

23 ASSOCIATE MEMBER GEESMAN: Does it need
24 to be addressed in our regs?

25 MR. WARNER: Well, I --

1 ASSOCIATE MEMBER GEESMAN: I mean
2 presumably we have the same authority under the
3 statute, as well; and presumably if the situation
4 presented itself, someone would come in here with
5 a petition.

6 MR. WARNER: Well, we actually talked
7 about that a little bit in the CPUC process. And
8 we do agree that the regulator generally, and
9 under most statutes, has a waiver, a general
10 waiver authority under extreme circumstances.

11 Here, though, because the statute came
12 in and there were questions, legal questions as to
13 whether the statute itself would allow a case-by-
14 case exception, the CPUC asked us to really
15 comment on that, and to brief that.

16 And I think what we would recommend is
17 instead of leaving it uncertain for the future, is
18 just to confirm that the regulator does have that
19 waiver authority, if for good cause shown, there's
20 a serious reliability issue. And so that's how
21 we've framed it in our comments at the CPUC. The
22 CPUC should be very specific in making that
23 process available, in our opinion.

24 ASSOCIATE MEMBER GEESMAN: Isn't that a
25 pretty slippery slope? I mean for good cause

1 shown, and then you say it has to be a heavy
2 burden. Do we need then to articulate the
3 elements of what that heavy burden will be?

4 MR. WARNER: No, because we believe that
5 either you in terms of the POU's, or the CPUC in
6 terms of the IOUs and other load-serving entities,
7 will have an opportunity to review that. There'll
8 be an opportunity for public comment like any
9 case-by-case waiver.

10 It would be great if we could specify in
11 advance exactly what reliability problem might
12 trigger the need for a waiver, but we think that
13 that's probably difficult to do in advance because
14 you really are case-by-case.

15 So we think that to the extent that you
16 want to provide new process, this would be done
17 publicly; there'd be an opportunity for comment.
18 But most importantly, it would be the regulator
19 that would decide whether a case-by-case waiver
20 was available. It wouldn't be something that
21 would be up to the regulated entity to decide.

22 MR. JORDAN: If I could address that.
23 Jerry Jordan. I think to the extent the PUC sees
24 a need for a reliability waiver or a waiver it's
25 because they're really -- and to the extent that

1 they're dealing with repowering or modifications
2 of existing facilities, they're doing that under
3 their pre-existing authority to regulate IOUs; not
4 under provisions of SB-1368.

5 SB-1368 clearly does not deal with
6 anything but new ownership investments or new or
7 renewed contracts. And if that distinction is
8 kept there is no need for reliability or rate
9 waiver because we're only dealing with new
10 facilities.

11 MR. WARNER: Actually we understand
12 that. We actually intend the case-by-case waiver
13 to apply to the prospective applications of 1368
14 to new commitments or new facilities. That's the
15 context we understand.

16 We agree that to the extent 1368 doesn't
17 apply, then it doesn't apply.

18 PRESIDING MEMBER BYRON: Thank you.

19 (Pause.)

20 PRESIDING MEMBER BYRON: Well, if I may,
21 we're going to -- the sense is that we're going to
22 keep pushing on through here in hopes that we're
23 close. Gary, are we about ready to go to the
24 chapter 3 questions?

25 MR. COLLORD: I think so.

1 PRESIDING MEMBER BYRON: Okay, let's go
2 ahead.

3 MR. COLLORD: I'll turn it over to Karen
4 to walk us through that.

5 MS. GRIFFIN: Okay, let's just go to the
6 fun one first, and that is if there is a
7 difference -- well, is there a difference between
8 the -- well, what is the meaning of a new
9 financial commitment for a new ownership financial
10 commitment? What kinds of commitments are covered
11 under that piece of the statute? That's the heart
12 of the issue.

13 Then we've already been -- some folks
14 have brought that up, so if people would
15 articulate what kinds of financial commitments
16 they believe are covered or not covered.

17 And Randy and Jerry have already stated
18 they believe it is only new ownership, in a new
19 facility.

20 MR. McLAUGHLIN: Bruce McLaughlin,
21 CMUA. We definitely don't split and take the word
22 ownership out of the phrase, new ownership
23 investment. We believe that was written to mean
24 that it's a new ownership investment, meaning you
25 are a new owner to a particular facility.

1 And so it would not, in that regard,
2 pertain to repowering. It would not pertain to
3 painting the pipes; it would not pertain to
4 maintenance or any other thing, because a new
5 ownership investment is exactly what those three
6 words mean.

7 And there is a distinction, the new or
8 renewed contract, the Legislature decided to make
9 that determination, new or renewed. They put it
10 in there for a purpose. Also the word "or" is in
11 that section on defining what a long-term
12 financial commitment is, not "and". And that's
13 very very important.

14 And I think the NRDC interpretation does
15 torture that paragraph tremendously.

16 ASSOCIATE MEMBER GEESMAN: Bruce, do you
17 think the statute would apply to a leasehold
18 interest? A new lease?

19 MR. McLAUGHLIN: Boss-Man?

20 MR. JORDAN: I guess I'm going to have
21 to ask my investment banker friend to define what
22 a leasehold interest is.

23 ASSOCIATE MEMBER GEESMAN: A lot of the
24 COPs were originally sold as leases, not
25 installment sale contracts. And, you know, the

1 staff whitepaper speaks of ownership interests.

2 But these were structured as leases.

3 Ownership might or might not transfer at
4 the very end of the lease for a dollar.

5 MR. JORDAN: I'm not sure that, you
6 know, that sounds like it may be somewhat similar
7 to some of the questions that have been asked
8 about joint powers agency --

9 ASSOCIATE MEMBER GEESMAN: Yeah.

10 MR. JORDAN: -- ownership; and I'm going
11 to refer that to my joint powers agency folks,
12 because they have an answer to that. Because, you
13 know, I'm not experienced with lease arrangements.

14 MR. CARNAHAN: Well, I think with regard
15 to the projects that are financed by the JPA and
16 secured by long-term take-or-pay so-called hell-
17 or-high-water contracts to secure the debt, the
18 only lien opportunity for the bondholders is the
19 facility not working through to other assets.

20 And at the end of that when the bonds
21 are paid off at the end of the contracts, the
22 facility ownership is retained by the JPA, not by
23 the individual participants.

24 ASSOCIATE MEMBER GEESMAN: Right.

25 MR. POPE: And our terms are life of

1 debt or life of project. So it is an ownership to
2 whichever is longer.

3 MR. McLAUGHLIN: But there are a number
4 of different structures at JPAs that I think would
5 be important that would come out in this
6 proceeding, also.

7 ASSOCIATE MEMBER GEESMAN: Yeah, I
8 think, and I'm speculating here, look at some of
9 the JPAs, the city and its own redevelopment
10 agency. And determine whether those are, in fact,
11 installment sale contracts or leases. And I think
12 you may find that a number of them are still
13 leases. I don't know, it's been a number of years
14 for me, but --

15 MR. POPE: I don't think -- ours are
16 purely the way as described. I don't have any
17 hybrid --

18 ASSOCIATE MEMBER GEESMAN: I think with
19 respect to the NCPA and SCPPA, that's right. And
20 I don't know what the Pittsburgh structure has
21 been. But I'm not certain that there's a policy
22 interest in the statute that would differentiate
23 between a lease and an installment sale contract.
24 I mean the intention is the same, to build a new
25 facility. But I don't know if the lawyers would

1 agree that the statute actually reaches leasehold
2 interests.

3 MR. KELLY: If I can make some comments
4 quickly. This issue about the meaning of
5 financial commitments and then the new ownership
6 investment, I know the PUC is addressing this or
7 will be addressing it in their PD, but the -- as I
8 understand it, the language in the bill, the
9 financial commitment language, was modified from
10 earlier language about just contracts, in order to
11 capture non-PPA-related financial commitments. So
12 it was put in specifically to address ratebased
13 kinds of assets that might be considered.

14 And the language regarding the new
15 ownership commitment, I mean under the arguments
16 that I've heard articulated by some folks at the
17 PUC and I think maybe now, a utility could put a
18 billion dollars in an out-of-state coal facility
19 that might have part ownership in, as a, quote,
20 repowering.

21 And my understanding was that the intent
22 here was to try to preclude that kind of behavior
23 or outcome.

24 So, I've see it argued at the PUC that
25 the adjective that was important here was new

1 ownership. We've argued that, no, it's the new
2 commitment, the new financial commitment is the
3 key. Because otherwise you make absurd the intent
4 of the bill, in many instances, in many important
5 instances, which was the goal of the people that
6 were pushing it to the Legislature.

7 So I understand, and I don't think
8 anybody is talking about people making financial
9 commitments of, you know, changing oil or painting
10 the facilities or something like that. It was a
11 bigger kind of issue than that. But it certainly
12 was intended to include, or in my view, capture
13 the potential for the IOUs to ratebase hundreds of
14 millions of dollars of investment in their
15 existing facilities as an alternative to going
16 forward.

17 MR. JORDAN: I would point out to Mr.
18 Kelly, because I'm sure he was involved in these
19 bills, that the last session there were at least
20 three pieces of legislation, one of which passed,
21 which dealt specifically with repowering.

22 So it is very clear that the Legislature
23 knows how to spell repowering. And I'm sure,
24 absolutely positive that the staff and Mr. Perata
25 knows how to spell repowering, and they did not

1 include it in the bill.

2 MR. KELLY: To be -- as in terms of
3 being precluded?

4 Well, I guess we could bring his staff
5 in; maybe they could talk about what they intended
6 here. But, --

7 (Parties speaking simultaneously.)

8 MR. KELLY: But I mean, you almost --
9 if, and I'm not talking about the POUs, but I'll
10 talk about the IOUs because there needs to be some
11 consistency. We've all agreed to that.

12 If a IOU could ratebase hundreds of
13 millions of dollars in an out-of-state -- that's
14 the outcome of that interpretation. It's one of
15 the utilities that has an ownership interest in an
16 out-of-state coal facility could invest hundreds
17 of millions of dollars in that to pertain to the
18 life of that facility. That would be the
19 outcome.

20 And, that seems, given the debate that
21 was going on, an absurd outcome from this bill.

22 MR. HOWARD: I want to challenge that
23 discussion a little bit. And I think -- you have
24 two emission bills that went forward, and I think
25 it was well explained by our constituent from ARB.

1 AB-32 really deals with your existing
2 portfolio. I mean it's going to deal with all of
3 your existing units; you're not going to take
4 several hundred million and just invest in your
5 coal facilities and retain an emission profile
6 that's not going to assist you in your reductions
7 you're going to be required to meet.

8 MR. KELLY: Could AB-32 only has
9 authority over instate generation facilities.

10 MR. HOWARD: No, absolutely not. I
11 fully disagree with you.

12 MR. KELLY: I have not heard the
13 argument yet that suggests that CARB can regulate
14 the emissions from a generation facility in New
15 Mexico.

16 MR. HOWARD: I believe it has all the
17 abilities to regulate the energy and the emissions
18 associated with the energy I use to serve my
19 customers.

20 ASSOCIATE MEMBER GEESMAN: You almost
21 said load-serving entity; I saw it --

22 (Laughter.)

23 MR. HOWARD: I pulled back. I did do
24 that.

25 MR. JORDAN: AB-32 doesn't necessarily

1 regulate out-of-state power plants because it's
2 not a power plant-specific approach. It does
3 regulate the portfolios of instate entities
4 including their out-of-state holdings.

5 MR. HOWARD: That's correct. And I
6 think we --

7 MR. KELLY: I think 1368 is the vehicle
8 to govern the portfolio of the procurement
9 activities of the --

10 ASSOCIATE MEMBER GEESMAN: So, Steven,
11 do you join in NRDC's approach that it's basically
12 a new source review type trigger, anything that
13 extends the life five years or more triggers 1368?

14 MR. KELLY: Generally, yes. I generally
15 agree with their perspective on that, yeah. That
16 everything is captured in that, IPPs -- if PPAs
17 are going to be captured then the ratebased assets
18 ought to be captured, as well.

19 MS. BERLIN: With all due respect to Mr.
20 Kelly, we want to make one point of clarification.
21 If we're looking --

22 ASSOCIATE MEMBER GEESMAN: Identify
23 yourself, please.

24 PRESIDING MEMBER BYRON: Yes, please
25 identify.

1 MS. BERLIN: Excuse me, I'm sorry.

2 Susie Berlin speaking for Northern California
3 Power Agency. And we have to look at the language
4 of 8340(j). And 8340(j) talks about a long-term
5 financial commitment in a new ownership
6 investment.

7 And Mr. Kelly prefaced his argument with
8 the notion that we need to concentrate on the term
9 new financial commitment. Well, new financial
10 commitment is not a term in subsection (j) of
11 8340. It's a long-term financial commitment in a
12 new ownership interest.

13 And we can't mix and match these terms
14 or we're never going to be able to discern the
15 clear meaning. We have to start with looking at
16 the actual terms, themselves.

17 MR. KELLY: Well, I guess, I mean I
18 guess I would argue that if there is a ratebased
19 asset for example, that has been fully
20 depreciated. It's the end of its useful life.

21 And there's a request to invest \$100
22 million to extend that life, otherwise that
23 facility would be shut down, that is a new
24 investment; it's a new ownership because the
25 ownership would have gone away.

1 (Parties speaking simultaneously.)

2 PRESIDING MEMBER BYRON: Would you like
3 permission to step away from the microphone again?

4 (Laughter.)

5 PRESIDING MEMBER BYRON: Mr. Kelly,
6 thank you, thank you. I'm going to keep pressing
7 this on here, if it's all right, staff? Is there
8 more discussion you need on that particular
9 question?

10 MS. GRIFFIN: No. I think we're done
11 with chapter 3. Whichever my chapter is. Yes.

12 MS. DeCARLO: I have one more question
13 within the chapter 3 realm. How we are going to
14 determine whether or not a facility meets the 60
15 percent annualized capacity factor requirement.
16 What types of filings; are we going to require any
17 filings; what are we going to look at to make that
18 determination?

19 I know at the PUC there was some
20 discussion over whether it's just electricity
21 transmitted to the grid, and not taken into
22 consideration; electricity used onsite. I think
23 the staff report eschewed that approach and just
24 decided that it was all electricity produced
25 onsite.

1 So I think in order to put forth these
2 regulations we need a little bit more
3 clarification as to what exactly we're going to be
4 looking at for that determination.

5 ASSOCIATE MEMBER GEESMAN: Was this a
6 controversy at the PUC?

7 MS. DeCARLO: I don't know how extensive
8 it was. It was debated.

9 ASSOCIATE MEMBER GEESMAN: What was the
10 approach taken by their staff paper?

11 MS. DeCARLO: I believe it was -- about
12 what they're going to be looking at?

13 ASSOCIATE MEMBER GEESMAN: Yeah.

14 MS. DeCARLO: I don't know that they
15 went into that detail.

16 ASSOCIATE MEMBER GEESMAN: Okay.
17 Because I mean this seems to me a counting
18 convention where we really are compelled to be
19 consistent.

20 MS. DeCARLO: The one problem is, and
21 Julie can correct me if I'm wrong, the PUC doesn't
22 really have to spell out everything that they're
23 going to be doing because they review these things
24 on a case-by-case basis. So in their decision
25 they may not go into the detail that we may need

1 in our regulations to pursue this.

2 ASSOCIATE MEMBER GEESMAN: Understood.

3 I'd sure be inclined to want to see their proposed
4 decision first, though. Because I do think we
5 should try to conform --

6 MS. DeCARLO: Um-hum.

7 ASSOCIATE MEMBER GEESMAN: -- as much as
8 possible.

9 PRESIDING MEMBER BYRON: I know there
10 were some side conversations going on while you
11 were talking, Ms. DeCarlo. Do any of the members
12 of the audience, the POUs, wish to weigh in on
13 these questions?

14 Lisa, maybe if -- can you restate your
15 question succinctly so maybe you can get a
16 response?

17 MS. DeCARLO: Okay, well one of them is
18 does the 60 percent threshold, the annualized
19 capacity factor, apply to facility's produced
20 power or its grid supply power.

21 And additionally, another issue that we
22 were discussing internally at staff was is the
23 language that the facility is designed and
24 intended. Is that intended present tense, or was
25 that intended when the facility was initially

1 designed? The design and intended language goes
2 to the 60 percent factor; is it --

3 ASSOCIATE MEMBER GEESMAN: Well, to get
4 metaphysical, isn't it the same time period as
5 designed?

6 MS. DeCARLO: That's one reading.

7 ASSOCIATE MEMBER GEESMAN: Rationalize
8 the other for me.

9 MS. DeCARLO: I believe the exact word
10 is designed and intended. So the question is is
11 it present tense or --

12 MS. GRIFFIN: I think the question is
13 for older steam boilers that were originally
14 designed to run at a higher than 60 percent
15 capacity factor, like Alamitos. But now run at a
16 30 to 40 percent capacity factor. And that's what
17 the contract is for.

18 So if they've got a contract with that
19 unit, that unit truly operates at less than 60
20 percent capacity factor now. But the day it was
21 designed it was designed to run at 70 percent.

22 Which interpretation? What does the
23 intended mean?

24 ASSOCIATE MEMBER GEESMAN: Or should you
25 read currently operated at as a synonym for

1 intended?

2 MS. GRIFFIN: Right, it's whose intent,
3 kind of.

4 ASSOCIATE MEMBER GEESMAN: You know, I
5 think these questions tend to answer themselves.
6 They're not necessarily the way any of us would
7 have written the law. And they may call out for
8 subsequent legislative clarification, but we have
9 the statute that we've been given. And I think
10 it's going to be hard to wordsmith your way around
11 some of these terms.

12 MR. KELLY: Just for clarity, because I
13 am familiar with this phrase. It was observed to
14 the Legislature that almost all facilities are
15 designed to operate 100 percent of the time for a
16 certain duration. Some not longer than others.

17 So I think that's why they added more
18 and more language. So that's where that came
19 from, the design stuff.

20 ASSOCIATE MEMBER GEESMAN: But they
21 added the word intended; they didn't say, and
22 currently intended, --

23 MR. KELLY: No, I know.

24 ASSOCIATE MEMBER GEESMAN: -- and they
25 didn't say, and currently operating as.

1 MR. KELLY: I understand. The language
2 is many times unartful.

3 PRESIDING MEMBER BYRON: Well, I am
4 inclined to continue. Go ahead, Gary. We've got,
5 are we down to section 2 here, then? Are there
6 questions in section 2? No.

7 MR. COLLORD: Section 2 sort of dealt
8 with the procedure, the OAL procedure; filing of
9 the regulations.

10 PRESIDING MEMBER BYRON: Okay. Well,
11 then we are at or near the close then of our
12 roundtable discussion. But I do want to make sure
13 once again that the public has an opportunity to
14 comment. So even though it might not be in
15 response to specific questions, at this time is
16 there anyone else that wishes to address the
17 Commission?

18 MR. HOWARD: There was one item that I
19 think I was getting into and we thought we were
20 going to cover in another area, and we didn't ever
21 get to that area. And that was really what
22 constitutes an agreement, or in our view would be
23 a procurement agreement.

24 I mean there are a large number of long-
25 term agreements that we enter into as a result of

1 constructing a power plant or owning or operating
2 a power plant. The operating agreements, there's
3 cotenancy agreements; there's fuel agreements;
4 there's lots of different types of agreements.

5 And our interpretation of the statute is
6 it's related to the procurement agreements. So,
7 that is the stance that we'd like to see taken in
8 the regulations so that it does exclude all the
9 other types of agreements that you need for your
10 operations.

11 As well, we raised some other issues. A
12 number of us, you know, we have border utilities
13 around us. And so we have an agreement in place
14 called a fringe agreement, you know. And I know
15 it's not contemplated, it's not a big number of
16 customers, but for the convenience of a utility I
17 serve some of Edison's customers, they serve some
18 of my customers. They bill them, or I bill, and
19 we just true up in energy.

20 And it's a long-term; it's an evergreen-
21 type agreement. But we don't think it was
22 contemplated here that we couldn't have that type
23 of exchange of energy back and forth and worry
24 about what the emission profile was associated
25 with that.

1 So there are some of those types of
2 agreements that we just don't believe are
3 applicable for this process of regulation.

4 MR. McLAUGHLIN: Bruce McLaughlin, CMUA.
5 Matt said that we had discussed blended contracts;
6 we discussed blended fuels. But I don't remember
7 that we had discussed what we consider to be
8 firming contracts, and the issues there. So I
9 don't know if you guys want to get into that now?

10 MR. LAYTON: I thought we had discussed
11 it when we talked about the unspecified contracts.

12 MR. McLAUGHLIN: I don't think to the
13 extent that we would have input on it.

14 ASSOCIATE MEMBER GEESMAN: Yeah, let's
15 get into it. This has to do in many instances
16 with firming a renewables contract, does it not?

17 MR. HOWARD: Yes. Or we would consider
18 it in some cases netting. A number of our out-of-
19 control-area agreements are recent agreements with
20 Wyoming Wind -- I have one pending before my board
21 today for some small hydro off the Pacific
22 Northwest.

23 It's really to deal with the imbalance
24 and being able to firm your schedule for the
25 delivery, but what you're trying to do is net to a

1 zero at the end of a month, meaning that
2 sometimes, you know, you believe the wind's going
3 to blow at such a rate and it doesn't quite. So
4 they're firming that schedule.

5 But other times it blows more than they
6 thought, and your objective is to get to a zero
7 point at the end of a month or so.

8 And we don't think that is well
9 addressed here at all in how you would handle
10 those types of agreements where you're using
11 either most likely a system resource to do that
12 netting or firming.

13 ASSOCIATE MEMBER GEESMAN: Is it always
14 with a renewable project?

15 MR. HOWARD: Those are the only ones
16 that I'm currently entering into, where there's an
17 intermittent resource.

18 ASSOCIATE MEMBER GEESMAN: Right.

19 MR. HOWARD: I mean we've already talked
20 about other long-term contracts where you're
21 buying off the system.

22 ASSOCIATE MEMBER GEESMAN: Yeah.

23 MR. HOWARD: We've discussed that. But,
24 for this netting or firming, for us it's really
25 only related to the intermittent.

1 MR. SHETLER: Jim Shetler with SMUD.
2 And generally I would say that's true. The only
3 thing that comes to my mind is northwest purchases
4 where -- and usually it would be a system
5 purchase, but obviously they have large hydro,
6 which doesn't necessarily meet the definition.
7 But that's probably more of a system purchase than
8 would be a firming in this context.

9 ASSOCIATE MEMBER GEESMAN: On these
10 firming contracts, does that fall within the
11 category of if we deem RPS-eligible projects to be
12 compliant, would an associated firming contract
13 also be considered a part of that RPS contract?

14 MR. CARNAHAN: Unless we're forced to
15 split the two deals into the renewable and the
16 other, which I think is NRDC's position. And then
17 you have to go back to the plant. You might be
18 only buying 20 percent, but it's a baseload
19 facility.

20 ASSOCIATE MEMBER GEESMAN: Or maybe a
21 system firming contract, which makes the detective
22 work tough.

23 MS. CHANG: And assuming that was a
24 question for me.

25 ASSOCIATE MEMBER GEESMAN: It was.

1 MS. CHANG: Yeah, in this case, I mean I
2 think really I encourage both Commissions to look
3 at the incentives that are put into place with
4 different, you know, with deeming system power
5 automatically eligible. I think there's a very
6 severe concern that a large loophole is opened up
7 where high-emitting resources now have an
8 incentive to go unspecified.

9 ASSOCIATE MEMBER GEESMAN: Is it a large
10 loophole or is it a small loophole?

11 MS. CHANG: I see it as a relatively
12 large loophole.

13 ASSOCIATE MEMBER GEESMAN: Because the
14 firming energy would be in such large volumes
15 under an RPS project?

16 MS. CHANG: Quite possibly, yes.

17 MR. McLAUGHLIN: One of the things --

18 MS. CHANG: You don't know, either.

19 MR. McLAUGHLIN: -- in some of these
20 contracts, if not all of them, every kilowatt
21 delivered has an associated REC. So there's no
22 more energy received by some of these contracts
23 than there's a REC in our hand. And so in essence
24 it's renewable power. Every last kilowatt.

25 MR. CARNAHAN: That's because of the

1 netting, you net to zero. So it's a plus and a
2 minus game.

3 ASSOCIATE MEMBER GEESMAN: But I think
4 they would say that if you're going to achieve 20
5 percent of your retail sales through RPS projects,
6 or 33 percent of your retail sales through RPS
7 projects potentially, every one of those kilowatt
8 hours could be a firmed kilowatt hour with a
9 thermal resource.

10 So that's how you get to it's a
11 potentially large number.

12 MS. CHANG: Correct.

13 MR. HOWARD: The approach that we've
14 taken in the recent SCPPA transactions is we
15 provide up to a 10 percent imbalance there. There
16 are limitations and boundaries as to how much at
17 any one time you would take for that firming. So
18 it requires the seller to be able to schedule
19 based on, you know, tightly controlled
20 information.

21 MR. SHETLER: The other comment I would
22 make, and we're trying to get to a 20 or maybe a
23 33 percent renewable portfolio standard, we will
24 continue to lean more heavily on intermittent
25 resources. And if we don't have an ability to

1 firm those up, now you are starting to talk about
2 a reliability issue.

3 Because if you're starting to lean more
4 and more on intermittent resources, then you need
5 that firming in order to assure you've got not
6 only the energy, in many cases the voltage to
7 support that.

8 So, I think you need to be careful here.

9 ASSOCIATE MEMBER GEESMAN: Or you need
10 the SMUD-pumped hydro project.

11 MR. SHETLER: I'd like to think that,
12 too.

13 (Laughter.)

14 MR. SHETLER: Can I quote you on that?

15 ASSOCIATE MEMBER GEESMAN: Go right
16 ahead.

17 MR. SHETLER: All right, thank you.

18 (Laughter.)

19 PRESIDING MEMBER BYRON: Anything else
20 on that, Mr. Howard?

21 MR. HOWARD: There was one other issue
22 that I don't think we addressed, and I apologize
23 for the time. I'll try to --

24 PRESIDING MEMBER BYRON: That's all
25 right.

1 MR. HOWARD: -- make this one my last
2 one. Is series contracts. Those of us that deal
3 daily in the market, we're buying or selling; and
4 staff has indicated that if I did a three-year
5 deal and then at the conclusion of the three-year
6 deal, for whatever reason, we determine that
7 another three-year deal is appropriate, then we've
8 exceeded the five-year threshold.

9 And I think we're going to have to be
10 very clear on that. My traders, schedulers,
11 everyone is going to have to know what do we mean
12 here. And, you know, we might think we're going
13 to achieve a certain number of renewables by a
14 certain time, and enter into a three-year bridging
15 agreement for some energy, because I think I'm
16 going to have a plant come on and something could
17 preclude that from coming on. I'm going to have
18 to enter into another one at the conclusion of the
19 three years.

20 And does that now trigger something that
21 I didn't expect?

22 ASSOCIATE MEMBER GEESMAN: This is only
23 my personal opinion. But I'll tell you, I think
24 it's unavoidable that this type of statute is
25 going to push a certain amount of reliance into

1 59-month contracts. That's just the way the world
2 works. Water runs downhill.

3 And I think if that gets to be a
4 problem, we're going to go in and change the law
5 and probably make it an incentive to go to 35-
6 month contracts. And we will continue to chase
7 you down the time scale.

8 But I don't think we can take an
9 approach where if we see a two-year contract
10 followed by a two-year contract, followed by a
11 two-year contract we're going to determine that to
12 be some form of illicit gaming to get around the
13 five-year rule.

14 I don't think this is something that we
15 can police in our regulations. And I think we
16 simply have to acknowledge, yeah, you're going to
17 have staked contracts. If we see too much of it,
18 the Legislature will change the law. But until it
19 does, there's nothing we can do about that.

20 MR. HOWARD: Well, I appreciate those
21 comments. And we recognize, as well, that our
22 board and city council adopted -- they have
23 adopted a CO2 emission threshold of 5 percent
24 below 1990 levels by 2012. And I can't keep
25 renewing contracts anyhow with high emissions, so

1 I don't see there's a problem.

2 I just wanted to --

3 ASSOCIATE MEMBER GEESMAN: You can run
4 but you can't hide.

5 MR. HOWARD: There you go. If staff was
6 going to go down that path, then we need some
7 further direction.

8 MR. POPE: John, I think the public
9 agencies are precluded from bid-splitting so that
10 there's no kind of gaming of bidding kind of
11 circumstance. So it is internally monitored and
12 policed internally.

13 The other thing is your portfolio mix is
14 going to drive a lot of those decisions, not
15 unlike what Randy's example is that you're kind of
16 doing what you need to do to keep the lights on.
17 But you're also managing, within the rules and the
18 laws of bid-splitting and within the portfolio
19 diversity that you have.

20 So I would hope that you wouldn't have a
21 gaming. There's other oversight that would
22 monitor that, that is in place in other rules and
23 laws of the land.

24 PRESIDING MEMBER BYRON: You know, I
25 think then if there's no further discussion of the

1 roundtable -- well, actually do we have an open
2 phone? Are there those on the phone that may be
3 waiting for an opportunity to ask questions?

4 Hearing none --

5 (Laughter.)

6 PRESIDING MEMBER BYRON: Good. Gary, on
7 the agenda I think then we have -- losing my paper
8 here -- I think we need to look at the closing
9 items on the agenda.

10 MR. COLLORD: Right, which is just sort
11 of the next steps. And that is, you know, our
12 direction was to begin preparing draft regulations
13 for consideration at the January 11th workshop.

14 And there will probably also be a
15 January 18th workshop, I imagine.

16 And just a couple of informational
17 items. I understand there will be a five-working-
18 day turnaround on the transcripts from this
19 meeting. And there has been a few requests for
20 copies of the PowerPoint slides that were
21 presented today. So if Audrey and Julie could
22 provide those, that would be great.

23 And that's all I have. Oh, yes, and the
24 PowerPoints will be posted on the web. And do we
25 have a suggested due date for written comments to

1 this proceeding?

2 PRESIDING MEMBER BYRON: I believe it
3 was December 13th.

4 MR. COLLORD: December 13th.

5 PRESIDING MEMBER BYRON: Correct? Yes.

6 MR. McLAUGHLIN: That date was for what?
7 Written comments for what?

8 MS. DeCARLO: If you wanted to submit
9 written comments after this workshop.

10 MR. McLAUGHLIN: To this?

11 MS. DeCARLO: Yes.

12 MR. McLAUGHLIN: So the day before the
13 transcripts are out?

14 MR. LAYTON: Two days. Two days before.
15 (Laughter.)

16 MR. McLAUGHLIN: I'm going to file a
17 brief.

18 PRESIDING MEMBER BYRON: Well, we're
19 close here. I have a few closing remarks, but
20 before I provide them I'd like to turn to my
21 fellow Commissioner and ask if he would like to
22 say anything.

23 ASSOCIATE MEMBER GEESMAN: No.

24 PRESIDING MEMBER BYRON: And we've been
25 so fortunate to have Ms. Fitch here all day.

1 Julie, would you like to say anything?

2

3 MS. FITCH: No.

4 PRESIDING MEMBER BYRON: None?

5 Well, we're clearly plowing new
6 territory here. We certainly appreciate the input
7 of all of you that were in attendance today. It's
8 new territory for both this Commission and for the
9 publicly owned utilities.

10 We do have the motion to amend the
11 current schedule for the '06 OIR-1. And, Mr.
12 McLaughlin, I can tell you that we will be denying
13 that.

14 And we'll be providing you some written
15 response on that. We feel the statute's pretty
16 clear with regard to schedule, and that's how
17 we're going to proceed at this point.

18 Written comments, as we indicated, by
19 December 13th.

20 I'd like to thank the staff for all your
21 preparation for this and the excellent issue paper
22 that was prepared for taking us through this in a
23 timely way.

24 Again, to Ms. Fitch for being here. But
25 most of all I always like to thank the

1 stakeholders and the public. I know it takes a
2 great deal of effort to be here, and we appreciate
3 your compliance with our schedule on a Friday.

4 Ladies and gentlemen, thank you very
5 much. We're adjourned.

6 (Whereupon, at 4:15 p.m., the Committee
7 Workshop was adjourned.)

8 --o0o--

CERTIFICATE OF REPORTER

I, PETER PETTY, an Electronic Reporter,
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Energy Committee Workshop; that it was thereafter
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I further certify that I am not of
counsel or attorney for any of the parties to said
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IN WITNESS WHEREOF, I have hereunto set
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